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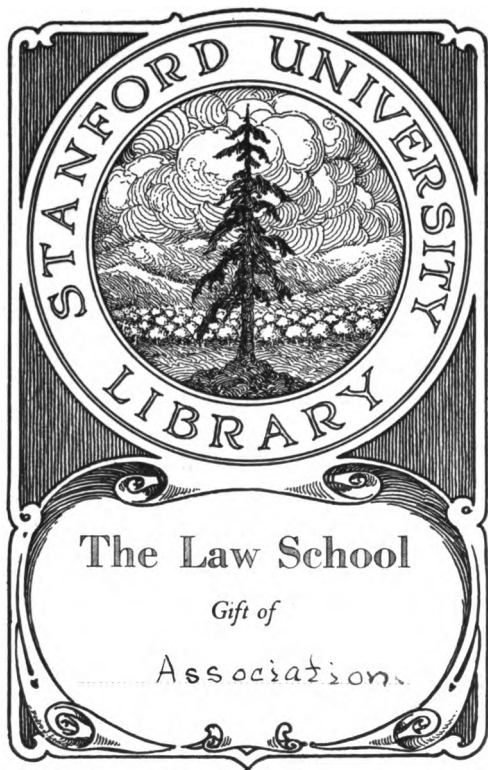
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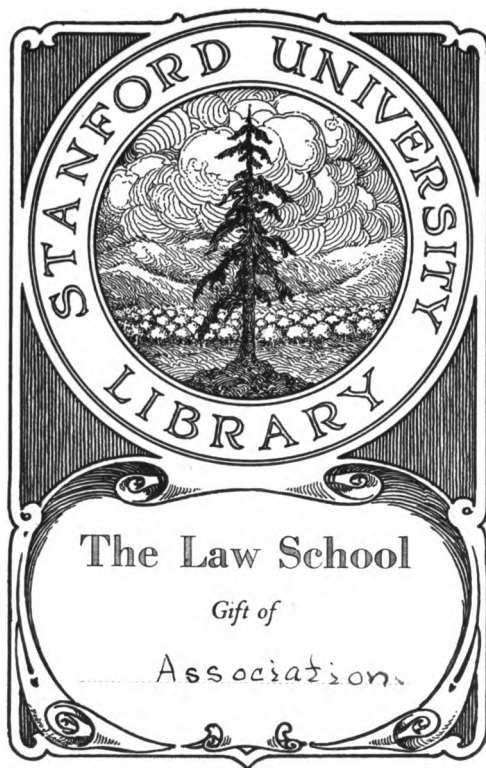
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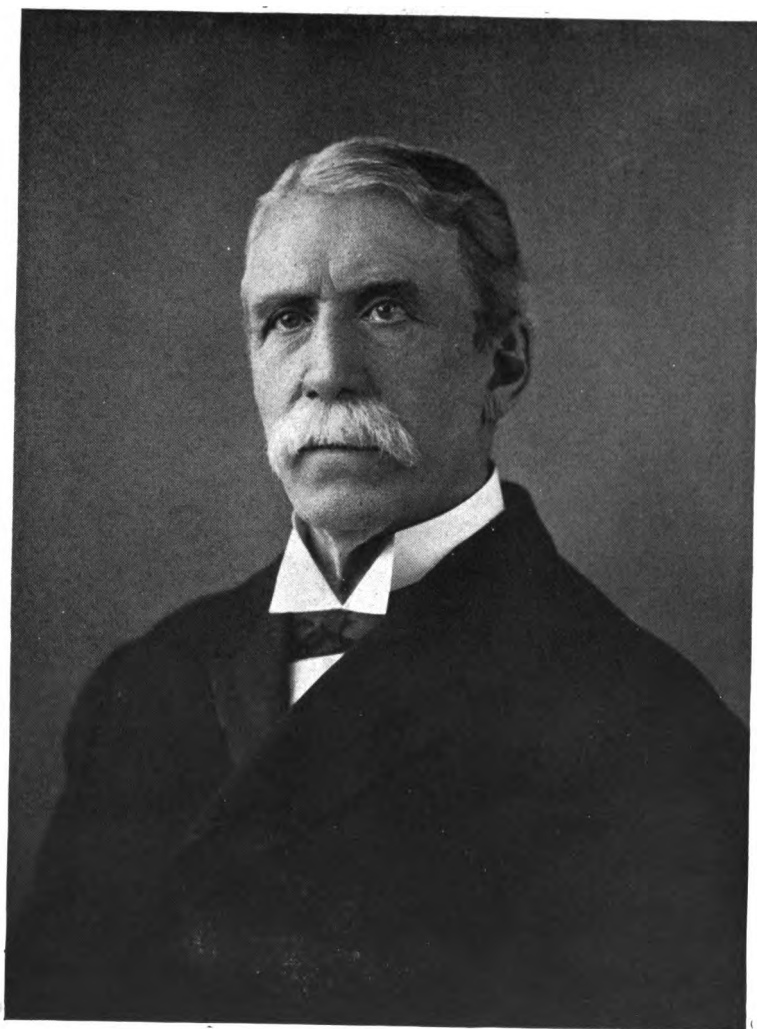












**A. A. JACKSON**  
President of the Association, 1905-6

REPORT  
OF THE  
PROCEEDINGS OF THE MEETING  
OF THE  
STATE BAR ASSOCIATION  
OF WISCONSIN

HELD AT  
MILWAUKEE, MARCH 13 AND 14, 1906

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## PREFACE

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This volume contains the proceedings of the regular meeting of the Association held at Milwaukee, in 1906. It also contains the report of the Committee on Necrology and Biography covering two years. There is included a list of the local Bar Associations in Wisconsin with their officers. The Committee on Publication was authorized by the Association to publish this volume immediately after the annual meeting. Delays for which the Committee on Publication is not entirely responsible prevented the earlier publication of this volume. If the action of the Association taken at its last meeting is unchanged the proceedings of the meetings in 1907 and 1908 will be published together immediately after the meeting in 1908, and thereafter the proceedings will be published immediately after each annual meeting. The committee has continued the plan of accompanying the addresses delivered before the Association with a portrait of the person delivering the address, and has where possible accompanied the memoir of deceased attorneys with their portraits.





# PROCEEDINGS OF THE ANNUAL MEETING

HELD AT

*Milwaukee, March 13 and 14, 1906.*

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The meeting was called to order by the President, Honorable A. A. Jackson, in the United States Circuit Court room, Milwaukee, Wisconsin, Tuesday, March 13th, 1906, at 8:10 P. M.

The President: The by-laws of our Association provide that the first order of business shall be an address by the President. It does not indicate what that address shall be. What I propose to give you can hardly be technically called an address, yet I am inclined to think that it may interest you.

It is my purpose to give you the result of some investigations as to the source of some of the provisions of our constitution. The title of my paper is, "Some of the Sources of the Declaration of Rights in the Constitution of Wisconsin."

*(See Appendix.)*

The President: The programme for tomorrow's meeting is as follows:

The Association will meet at 9:30 in the morning in this room, when Chief Justice Cassoday will deliver an address, to be followed with a paper by Senator Whitehead at 2:30 in the afternoon. Hon. J. Hamilton Lewis of Chicago will deliver an address in the afternoon, after which the regular business of the Association will be transacted.

Is there any special matter that any member de-

sires attention called to to-night? There being none a motion to adjourn will be in order.

Motion made, seconded and carried adjourning until 9:30 next morning.

Wednesday, March 14th, 1906, 9:45 A. M.

Meeting called to order by the President.

The President: The first order of business will be the report of the Committee on Membership.

Mr. John B. Sanborn then read the report of the Committee on Membership as follows:

*To the State Bar Association of Wisconsin:*

Your Committee on Membership would respectfully report that they herewith present the names of applicants for membership in your Association whose applications have been received up to the present time and recommend that they be admitted to membership.

F. L. McNamara,	-	-	-	Hayward.
Otto W. Arnquist,	-	-	-	Hudson.
Spencer Haven,	-	-	-	Hudson.
L. H. Mead,	-	-	-	Shell Lake.
Henry D. Goodwin,	-	-	-	Milwaukee.
Jay F. Lyon,	-	-	-	Elkhorn.
W. J. Conway,	-	-	-	Grand Rapids.
T. W. Brazeau,	-	-	-	Grand Rapids.
F. R. Bentley,	-	-	-	Baraboo.
W. A. Walker, Jr.,	-	-	-	Milwaukee.
L. M. Marsh,	-	-	-	Neillsville.
E. G. Rahr,	-	-	-	Milwaukee.
Hon. C. A. Fowler,	-	-	-	Portage.
F. L. Gilbert,	-	-	-	Madison.
P. L. Lincoln,	-	-	-	Richland Center.
G. M. Dahl,	-	-	-	Stevens Point.

John C. Kleist,	-	-	-	-	Milwaukee.
J. C. Stevens,	-	-	-	-	Milwaukee.
Benjamin Poss,	-	-	-	-	Milwaukee.
Edgar L. Wood,	-	-	-	-	Milwaukee.
Herman L. Ekern,	-	-	-	-	Whitehall.

C. F. LAMB, *Chairman.*

Mr. Lamoreux: I move that the report be adopted.  
Motion seconded and unanimously carried.

Motion was made, seconded and unanimously carried that the rules be suspended and the Secretary cast the ballot of the Association for the election to membership in the Association of the persons whose names are recommended by the Committee on Membership.

The Secretary so cast the ballot and the applicants were duly elected members of the Association.

The President: The next order of business will be the report of the Secretary.

The Secretary: Mr. President, the Secretary's report has heretofore been omitted for the reason that stenographic notes are taken and a full record appears in published form, so that no report has ever been thought necessary to be made by the Secretary.

The President: By request of the Treasurer his report will be deferred.

The next order of business is the report of the Executive Committee.

As chairman of that committee I report that the committee have prepared no formal report.

I will call for the report of the standing committee on Legal Education.

Mr. Howard L. Smith of Madison: I believe I am chairman of that committee. The committee made a formal and somewhat extended report a year ago and

nothing has since then happened in the field of legal education which has seemed to require a formal report at this meeting. The committee therefore has no formal report to make.

The President: We will pass the report of the Committee on Necrology and Biography, in the absence of the chairman, Mr. Wight.

The next order of business is the report of the Committee on Publication. Mr. John B. Sanborn will present that report.

Mr. Sanborn presented the report as follows:

*To the State Bar Association of Wisconsin:*

The Committee on Publication respectfully reports that under direction of the Executive Committee and pursuant to action taken by the Association at its meeting in 1904, directing that the proceedings for 1904 and 1905, exclusive of the report of the Committee on Necrology, be published together, it has prepared and printed an edition of five hundred copies of the reports of such meetings in one volume bound in cloth containing 522 pages and at a cost of \$508.40.

All of which is respectfully submitted.

Dated, Madison, Wisconsin, March 12, 1906.

ERNEST N. WARNER,

*Chairman of Committee on Publication.*

Mr. Scheiber: I move that the report be adopted.

Motion seconded, unanimously carried and the report ordered adopted.

Mr. John B. Sanborn: Mr. Warner and myself were appointed a special committee by the Executive Committee to report at this meeting concerning the future publication of volumes of the Bar Association, and I have that report and will present it now. This also



includes as incidental to it some report upon the question of the finances of the Association, which are intimately connected with the publication of the report.

The report is as follows:

The undersigned were appointed a special committee by the Executive Committee of the Association for the purpose of preparing recommendations in regard to the annual dues of the Association and the publication of the volume of the proceedings. Section 10 of the constitution of the Association provides, among other things, as follows:

“The admission fee shall be two dollars, to be paid in all cases on signing the roll of members. Annual dues shall be fixed and assessed at the annual meetings, and shall be payable forthwith, and on the payment thereof the member shall be entitled to the publications of the Association for the current year, and any member failing to pay, after thirty days notice, shall cease to be a member unless excused by the Executive Committee.”

It has been the practice for a number of years to assess the dues at three dollars so that it may be taken as settled that that amount is the one which it is most advisable to fix upon as a regular sum in case it should be considered that the assessment plan be abandoned. There are a number of complications in the present assessment plan. The dues which are to be assessed at this annual meeting are for the year 1905. They will be used largely to pay the expense of the publication of volume six of the reports of the Association which contains the proceedings of the last annual meeting and the proceedings of the year 1904, the publication of which was postponed on account of the

republishing of volume one of the reports. The publication of the proceedings is thus delayed at least a year from the annual meeting, as there are necessarily no funds in the hands of the treasurer until the following annual meeting which can be used for the publication of the new volume. The system also has complications in the keeping of the treasurer's accounts, as many of the members do not understand the arrangement and assume that the dues which are paid in one year are for that year. Your committee believe that it is desirable that the annual dues be fixed at a certain definite sum, preferably three dollars a year, and that they be made payable for the current year instead of for the past year. Your committee also believe that it is advisable that the proceedings of the annual meeting be published as soon as possible. These proceedings often contain comment upon matters of current interest to lawyers, and it is very desirable that they be preserved in permanent form as soon as the publication can properly be arranged.

The Association either directly through the adoption of resolutions or indirectly through the presentation of papers and discussion thereon make recommendations regarding the legislation of the state and the postponement of the record of such recommendations for at least a year weakens to a considerable extent their force. In order that the publications of the proceedings be accelerated, it is the belief of the committee that it will be necessary to borrow sufficient money for the publication of the report for the present year and that the publication of the proceedings for the following year be deferred until the year 1908. This would provide for the publication of the papers which are to be presented at this meeting, and the re-

port of the Committee on Necrology, the publication of which has been deferred some time, within a comparatively brief period after the adjournment of this meeting. The proceedings for next year would be delayed for one year but no longer than is inevitable if the present plan is continued. There are two other ways in which your committee considers that it is possible to arrange the matter, but it does not feel warranted in recommending the adoption of either of them. The publication of the proceedings of the present meeting could be deferred until immediately after the annual meeting of the year 1907 and the proceedings of that meeting combined in a volume to be issued soon after the adjournment of that meeting. On account of the report of the Committee on Necrology which your committee believes to be extremely valuable, the proceedings for the present meeting with such report would make a substantial volume in itself and the combining in that volume of the proceedings of the year 1907 would make an extremely large volume. It is also possible for this meeting to follow the present provision of the Constitution by making an assessment upon the members for the past year which would be used to pay for the publication of the current volume and to amend by providing for the payment of dues in advance, such amendment to go into effect at once so that such dues could be collected for this year. Your committee, however, do not feel that this would be advisable as it would make the current dues heavy and it is believed that such a measure would tend to restrict the membership of the Association.

Your committee therefore make the following recommendations:

1. Amend section 10 of the Constitution of the Association by striking out all of the last sentence thereof and inserting in lieu thereof the following: "Annual dues shall be three dollars and shall be payable for each year on or before the annual meeting of that year." Also omit the assessment for the year 1905.

2. Authorize the Executive Committee of the Association to borrow, in the name of the Association, such sum as shall be necessary to secure the immediate publication of Volume 7 of the reports of the Association; such sum not to exceed five hundred dollars.

Respectfully submitted,

ERNEST N. WARNER,

JOHN B. SANBORN.

The President: You will see by this report that we have been struggling with a difficulty for many years. Our assessments have been just one year behind. That has delayed the publication of a report of one meeting to the next meeting, so that the report of one meeting could not be published until just preceding the next meeting, when the receipts of the last meeting could be used to defray the expense of publishing the report of the preceding meeting. The report of the committee is in the direction of obviating that difficulty, which ought to be met in some way. We ought not to be a year behind in our work. The report of each meeting ought to be published as soon as possible after the meeting, that every member may have promptly a copy of the proceedings of the meeting and papers read and addresses delivered.

What will you do with the recommendation of the committee?

Mr. L. J. Nash: The committee recommends the amendment of the constitution, but can that be done by merely adopting the report?

The President: No sir, it cannot.

Mr. Nash: What would be the effect of our adopting the report?

The President: Well it would not amend the constitution. It might have the force of a resolution to change the method of work in reference to publishing reports, but it would not change the constitution.

Mr. Nash: It would probably authorize the borrowing of money as recommended, would it not?

The President: (To Mr. Sanborn.) Have you drawn a form of amendment to be adopted?

Mr. Sanborn: A form of amendment is incorporated in the report. It was my intention if the report was adopted to offer to the Association an amendment to the constitution, which must be adopted of course, by a two-thirds vote of those present at the meeting, thus meeting the question of the amendment of the constitution—provided the Association takes favorable action on the report. I think it would be necessary to take both actions in order to properly amend the constitution.

The President: The provision of the constitution in relation to amending that instrument is this: "This constitution shall go into effect immediately. It can be amended only by a two-thirds vote of the members present or by proxy at an annual meeting of the Association."

If an amendment should be now proposed and should be voted for by two-thirds of the members present, that would amend the constitution under this rule.



Mr. Lamoreux: Does it not mean two-thirds of the entire Association—not those present?

The President: It can only be amended by two-thirds of the members present, or by proxy at an annual meeting of the Association. I construe that to mean two-thirds of the members present at the meeting where the amendment is offered.

Gen. Winkler: Then we can amend now by a two-thirds vote?

The President: I think so.

Mr. E. P. Vilas: The practice has always been heretofore with respect to amendments of the constitution, that they be proposed by resolution offered specially for that purpose, and I do not understand that this report offers any resolution.

The President: No, sir; it does not.

Mr. Vilas: The report also suggests that the committee be authorized to borrow money. That should also come in the form of a resolution, according to the practice of the Association heretofore.

I therefore move that the report be received and placed on file.

Motion seconded and unanimously carried.

Gen. Winkler: I do not quite catch the purport of this report, or the amendment proposed to be made; but I have realized in the past when I was connected with the management of the Association, that our financial arrangements were not satisfactory, and if there is a remedy proposed I should be sorry to see it disposed of by simply laying it upon the table. I think something ought to be done. We ought to provide for a prompt publication of the reports of the Association; and the collection of the annual dues ought to be connected with the report, so that when the re-

port can be ready we call for the dues and send the report to every member on payment of his dues. I think that would add very much to the solidity of the organization. Now just what the proposal is I do not know. I did not quite catch it.

Mr. Vilas: Mr. Sanborn is about to offer the resolution.

Mr. Sanborn: I desire to offer the following resolution:

*Resolved*, by the Association, that section 10 of the Constitution of the Association be amended by striking out all of the last sentence thereof, and inserting in lieu thereof, the following:

“Annual dues shall be three dollars and shall be payable for each year on or before the annual meeting of that year.”

I also desire to offer a further resolution to the effect that the Association make no assessment of annual dues for the past year.

Now in order to explain the two together, it is simply this: that by omitting the assessment we will just drop out 1905, but the dues will be payable under the new wording of the Constitution at the present time, and we therefore will collect in the dues at the same rate that we would if the change had not been made, that we will catch up with the present year.

The President: If you waive the assessment for 1905 and make your assessment for the coming year will you not be obliged to use the amount realized from the assessment for the coming year to defray the expenses of publishing the last report, and will you not leave the matter in the same position that it has been in.

Mr. Sanborn: That is contemplated by the report,

that that shall be done—that is, we borrow the money to publish the report and use that money, and omit the publication next year, and use that money to replace our loan, and put the report of the following two meetings in one volume. That was the intention of the report.

There is one point to which I wish to call the attention of the Association. The present constitution provides that the members shall forfeit their membership if they do not pay their dues within thirty days after notice. I do not know whether fortunately or not, but I was not aware of that and I collected a large number of dues that were overdue under that provision; and my experience has been this year that if we put that limitation on we will have comparatively few members left. I know a number of members of the Association who I think are very good members, who certainly did not pay within thirty days after the notice; and it is very easy to overlook the matter. I do not know what limitation should be established. I did not refer to that in the amendment, but thought I would call the attention of the Association to it. It was simply left without any provision. It certainly has not been the custom to drop the names out, as I know from the books, and not the custom of any other associations that I am connected with to do that, on any such short notice.

I received during the past year from three or four persons at least, fully \$12.00 in dues, and I certainly was very glad to get it in, and I do not know what the practice has been entirely; but I should judge that when paid they received the publication of the Association for the year for which they paid, and that they were continued in membership.

Mr. Vilas: As I understand the proposition it is to increase the annual dues to \$3, payable now, to relieve the members from any past dues or assessments for 1905. Do I understand that the amount to be raised by this \$3, to be payable now, will be enough to meet all of our current expenses, including the publication of the report, when it is paid in?

Mr. Sanborn: Why, that is something that is hard to tell accurately.

Mr. Vilas: Of course, but approximately. In other words, with that amendment of the constitution do you require to borrow any money, or if you do borrow it presently for the publication of the report, do you expect that to be repaid from the collection of these annual dues for the current year?

Mr. Sanborn: That was the intention—that is, the borrowing would be repaid, not from the 1905 dues, but from the 1906 dues.

Mr. Vilas: Certainly, from this \$3.

Mr. Sanborn: Yes, and the publication in 1907 would be combined with the next publication.

Mr. Vilas: Merely in anticipation of these dues?

Mr. Sanborn: Merely in anticipation of these dues. The reason I said \$3 was that for several years it has been fixed at \$3, and I assumed that that having been the case in the past, with the additional new members that we have every year, \$3 ought to be sufficient.

Mr. Vilas: In other words, the dues raised to \$3 will meet what we have heretofore paid in dues and assessments.

Mr. Sanborn: Yes, it is just the same as we have already paid for several years in the past, and I thought that would probably be the sum at which the Association would desire the dues to be fixed. It is

rather more convenient to have a fixed sum, because I am frequently asked how much the dues are, when members come in, and of course I tell them \$3, and some have paid me in advance for the year 1905, if the old practice is continued, and I have taken \$3 from them because I assumed that that would be done as it has been done heretofore.

The President: Are you prepared to vote on this question?

Mr. Sanborn: I offer the resolution in two parts and I think they ought to be separated, because one amends the Constitution.

The President: The question will be on the adoption of the resolution amending section 10 of the Constitution of the Association by striking out all of the last sentence thereof and inserting in lieu thereof the following:

“Annual dues of \$3 shall be payable for each year at or before the annual meeting of each year,”

Motion made, seconded and unanimously carried adopting the resolution, and the Constitution ordered amended as stated in the resolution.

The President: What is the next resolution?

Mr. Sanborn: The resolution is to the effect that we omit the assessment for the year 1905.

This resolution carries with it, by inference of course, if the association is to publish the reports ahead of time, the borrowing of money. That is, it does not in form, but in order that we may publish the report it will be necessary to borrow the money. I do not know now that we have amended the Constitution in respect to the annual dues, that it is necessary to present a resolution to omit the assessment for the year 1905. However, I will put the second resolution in

shape and present it again this afternoon if that is agreeable.

The President: We are now to listen to one who by his long, faithful and distinguished services at the bar, and in the supreme court of this state, has endeared himself to us all, and one whom we delight to honor—Chief Justice Cassoday.

Chief Justice Cassoday: Perhaps I ought to state that I may be obliged to call on some young man present to read a part of this paper. The fact is that during the last week I have had a very severe cold that settled in my throat, and have been confined to the house a great deal of the time. But in the language of Chief Justice Ryan, introducing his lecture on Mrs. Jellaby, a great many years ago, I will try to read as well as I can what I have written as well as I could.

*(See Appendix.)*

The President: I will appoint as a Committee on Nominations Messrs. Vilas, Lamoreux and Richards, and will ask that committee to be prepared to report this afternoon.

The next order of business will be the report of the Judicial Committee.

Mr. E. P. Vilas: The Judicial Committee has no formal report to make, other than this, that there has been no necessity for any meeting of that committee during the past year. The committee is one of discipline pure and simple, and there have been but three complaints made to the committee during the year, all of which were of such a character that it was thought the State Bar Association should not be called upon to investigate or pass upon them; but each case was referred to the local bar association, because of

the local character of the complaint made, and in each case the complaint was in the judgment of the chairman of the committee at least, and the president, so far as they were brought to the attention of the president, merely controversial between individuals and had no public importance.

The President: The next order of business is the report of the committee on the Amendment of the Law.

Judge Sanborn: The committee is not ready to report just yet, but I think we can report later.

Mr. Nash: I would like to inquire what is the present status of a financial enterprise that was undertaken two years ago. It will be remembered that there was an effort made then to raise money to procure reprints of the first volume of the Association's reports, and that there was considerable money raised here at that time. As far as I know that reprint has never been distributed.

The President: That reprint was presented last year, and all of that fund that was contributed was applied in payment of the cost of reprinting that volume, and the remaining portion of that cost was paid out of the dues I think, of last year. That volume was presented at the last session.

Mr. Nash: What progress has been made in getting out the reprint of the first volume?

The President: That is the volume I spoke of—that was completed and presented at the last session of the Association.

Mr. Nash: I was not here and I have not seen the volume.

The President: The volume was completed last

year and presented at the last session of the Association and has been paid for.

Recess was here taken until 2:00 P. M., same day and place.

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March 14. 2:00 P. M.

Meeting called to order by the President.

The President: I have the pleasure now of introducing one who comes from a sister city, the great metropolis of the west, whose reputation is not bounded by state lines, who will address you this afternoon. I take great pleasure in introducing to you Hon. J. Hamilton Lewis of Chicago.

*(See Appendix.)*

The President: We will listen to a paper by one whose name has become a household word in the annals of the legislation of Wisconsin, and who by accurate and painstaking work in legislation has come to be known as a wise and prudent legislator.

Senator John M. Whitehead then addressed the Association on "The Statutes of the State, their Condition, and Some Methods of Improving Them."

*(See Appendix.)*

After reading his address Senator Whitehead said:

Suppose a lawyer were to take up this matter of real estate proceedings and have ready to present to the next legislature a charter which should succinctly and clearly describe and arrange the law upon that one single subject. It would eliminate from the revised statutes of Wisconsin fifteen or twenty pages at least.

I think the time is ripe for a professional reviser of the statutes. The session crowds us with work so that



it is impossible for even the best lawyers in the legislature to keep track of the work in its details. I was talking with the distinguished chairman of the senate Judiciary Committee here to-day, and he said he found it very difficult when he returned home at the close of the session to tell anybody what had been done. A bill, for instance, has passed the senate, has been as carefully considered as time will permit, goes to the house and is killed; all track is lost of it. It passed the senate, and then as I say, all track is lost of it. How does the senator know in the midst of the multitude of details that occur to his mind as he thinks over the session, what happened to that particular bill?

Now it seems to me that the statutory style of writing ought to be taught to our law students, to those who are going to frame these laws. The statutory style is not as good to-day as when the territorial statutes were compiled in 1839; it is not as good as it was in 1849. There is no place for adjectives and adverbs in statutes. It is the function of the statute to lay down the mandate distinctly and positively without embellishment. There is no place for fine style. What is wanted is clearness and precision. There should not be many compound sentences; there should be simply a single sentence stating the single proposition. If you will give the matter some attention, you will find that the difficulty of construction lies in the confused style in which the law is expressed.

I spoke before the Bar Association several years ago and gave several illustrations of these long, involved confused sentences. My experience is that the greatest sinners against a good style of statutory

writing are the lawyers themselves. They send us their bills, they come from lawyers' offices, and it is astonishing to see the amount of confusion that would be introduced into the statute if many of these bills were passed and became laws as we receive them from lawyers. And one of the functions of an association of lawyers for the state of Wisconsin, should be to give this matter of statutory style and statutory revision consideration. If you want something to interest you for a line of thought, study and investigation, as lawyers, there is nothing that will pay you better, and there is no way in which you can better pay your debt to your profession in the state of Wisconsin for the next twenty-five years than to take this matter up. It will take twenty-five years to revise these statutes as they ought to be revised.

You remember these quotations which I made from these prefatory notes, showing how the revisors were crowded. The legislature demanded immediate action, there was no time allowed, and one man did one part of the work and another man did another part of the work. It was so with the committee with which I was connected. I took one chapter and another member took another chapter, and we had no time to compare the work which one of us had done with that which the other had done. It is a wonder that the two volumes of four thousand pages should be as well prepared and as free from errors as the volumes of 1898 are. The difficulties that are inherent to a complete revision at one time, are to my mind utterly insurmountable. Now we should have a topical revision of the statutes. We should devise some method of numbering in sections and divisions. We have outgrown the system of 1898. Take section

525. It contains 279 subdivisions. We have got chapters with letters to them and there are other sections that have had so many subdivisions added to them that the original section is utterly lost.

Now there should be devised in this day of modern scientific methods of classifying, some means by which the permanent portions of the statutes need not be destroyed by the amendments, but by which the amendments could readily be distinguished from that which had hitherto been permanent; and that is for the legislature, under the guidance and experience of lawyers, to work out; and it is one of the problems that confronts the bar of this state; and it ought to be taken up, and the lawyers ought to be thinking about it, and each man contribute all that his thought, ingenuity, genius and knowledge of the law will enable him to contribute, to make our statute of law a credit to our state.

The President: Have you in mind any form of proceeding which will reach the result which is conceded to be so desirable? Ought we not to take some action in this matter? We meet but once a year, and is not now the proper time to take hold of that work in earnest?

Senator Whitehead: There is talk in the legislature along the line that there should be a commission of revision, or permanent officer, and that the bills themselves before they are ever laid on the members' desks ought to be overhauled; we ought to know what the bills themselves cover, whether they are covering statutes that have been on the statute books for twenty-five years or not, as many of them do, and we have a great deal of difficulty in municipal law in knowing where to attach an amendment. A friend

of mine has told me this afternoon of the experience he had during the last session of the legislature. The section with reference to municipal bonds, statutes of 1898, was amended in 1901 or 1903, an amendment to the statute of 1898 having been sent down from some city. This we passed, and it threw this gentleman out of court, and invalidated his bond issue as quickly as it was done. But we simply did not know where we were, nor what legislation there was on the statute book, and the question comes up, where shall this amendment go, where shall this new section be placed, what is its logical connection? And there is a difference of opinion among the lawyers and committee oftentimes as to where that amendment should be placed; and it seems to me there is a demand for technical knowledge; a demand for elaborate, minute knowledge of the statutes of the state; and I cannot conceive of any way in which that can be brought to the effective use of the legislature except through a man who makes it his business. Whether the legislature can be brought to provide such a man or such a commission remains to be seen. It has not been asked up to this time.

The President: There will be a session of the legislature before this body will meet again. In your judgment will it be wise to appoint a committee that shall take that matter into consideration and report at the next meeting of this body, or report in the form of a bill to the legislature suggesting some method by which this result can be accomplished. We may accomplish something even in that way. Have you any suggestion about that? If not, gentlemen, we will take up the business of the session and complete it.

Mr. John F. Burke: Would it not be well to have

the chair appoint a committee of three or five men to carry out the work just suggested by Mr. Whitehead. If it is the sense of the meeting I move that the chair appoint a committee of three or five, of which Senator Whitehead shall be chairman, for the purposes indicated in his paper.

Mr. E. P. Vilas: I move, instead of the motion offered by the gentleman, that the committee on the Amendment of the Law, be instructed to confer with Senator Whitehead upon this subject and take such action as they deem best to effect the purposes of his address.

Senator Whitehead: To confer with the legislature.

Mr. Vilas: With the legislature perhaps, or with such committee as may be appropriate for that purpose.

Mr. Burke: I will gladly accept the amendment.

Seconded and unanimously carried.

The President: We are now ready to receive the report of the Committee on Nomination of Officers, of which Mr. Vilas is chairman.

Mr. Vilas: The committee appointed for that purpose recommend the election of the following officers for the coming year:

For President—L. J. Nash of Manitowoc.

For Vice Presidents:

1st Circuit—Thomas M. Kearney.

2nd Circuit—Charles Quarles.

3rd Circuit—Charles Barber.

4th Circuit—Paul T. Kretz.

5th Circuit—Philo A. Orton.

6th Circuit—R. S. Reid.

7th Circuit—E. E. Browne.

8th Circuit—E. W. Helms.

9th Circuit—John M. Olin.  
 10th Circuit—Orlando E. Clarke.  
 11th Circuit—H. H. Grace.  
 12th Circuit—R. B. Kirkland.  
 13th Circuit—T. E. Ryan.  
 14th Circuit—Samuel D. Hastings, Jr.  
 15th Circuit—C. A. Lamoreux.  
 16th Circuit—Claire B. Bird.  
 17th Circuit—R. J. McBride.  
 18th Circuit—Maurice McKenna.  
 For Secretary—C. I. Haring, Milwaukee.  
 For Treasurer—J. B. Sanborn, Madison.  
 Members of Executive Committee for three years—  
 Chas. F. Lamb, Madison and W. W. Wight, Milwaukee.  
 March 14, 1906.

EDWARD P. VILAS,  
*Chairman.*

Motion made, seconded and unanimously carried adopting the report.

Motion was made, seconded and unanimously carried that the rules be suspended and that the treasurer be instructed to cast the ballot of the Association electing the nominees to their respective offices.

(The treasurer cast the ballot, and the president declared the nominees duly elected to their respective offices.)

The President: I will appoint as a committee to audit the treasurer's account, Mr. Lewis, Mr. Lamb and Mr. Warner, all residing in Madison. They can audit that report and certify it and let it become a part of the record.

The treasurer's report, as so audited and certified, is as follows:

The following shows the receipts and disbursements since the last annual meeting.

RECEIPTS.	
Cash on hand.....	\$54 21
Banquet.....	153 00
Special subscription.....	220 00
Initiation fees and dues.....	538 85
	<hr/>
	\$966 06
DISBURSEMENTS.	
Banquet.....	\$212 72
Printing volume 1.....	404 93
Expense printing committee.....	33 94
Printing volume 6, (part payment).....	100 00
Expense Hon. Emlin McClain.....	35 00
Miscellaneous Printing.....	29 00
Dray.....	75
Postage and stationery.....	9 83
Reporting meetings.....	77 50
Secretary's expense.....	35 00
Express.....	19 48
	<hr/>
	958 15
Balance,.....	\$7 91

Respectfully submitted,

JOHN B. SANBORN,

*Treasurer.*

The undersigned have examined the foregoing report of the treasurer and find the same correct.

H. M. LEWIS,

C. F. LAMB,

ERNEST N. WARNER,

*Auditing Committee.*

Mr. John B. Sanborn: The report of the special committee of the executive committee was considered and an amendment to the constitution adopted, but the remainder of the report, being a certain resolution was laid over to be taken up later. Will it be in order to take that matter up now.

The President: We will take it up now.

Mr. Sanborn: The amendment to the constitution was adopted, and there was pending a resolution which I offered, that no assessment be made this year, in order to obviate a double assessment. I withdraw that resolution, because in the absence of any action there would be no assessment, as it appeared to me, and therefore the resolution is unnecessary.

I wish however, to offer a further resolution that the Executive Committee be authorized to borrow not exceeding \$500 in the name of the Association, and that they proceed with the publication of the next report as soon as possible, instead of deferring it. That was the second part of the recommendation of the committee.

Moved and seconded that the resolution be adopted.

Mr. Vilas: I understood the resolution to be merely to anticipate dues to be collected to-day, and which should be collected to-day, immediately after this meeting for the ensuing year.

The Treasurer: No. By omitting the assessment we would have no funds except those of the present year to pay for volume six, which will probably be paid for out of the funds now collected, and the recommendation of the committee was that we should next year, instead of publishing the proceedings immediately after the meeting, publish them immediately after the proceedings of 1908.

Mr. Vilas: Then we will be continually behind.

Mr. Sanborn: Then in 1908 we will catch up.

Mr. Vilas: Then why should the payment be limited to the dues collected next year? I think any funds properly to be appropriated to that expense should be appropriated by the Executive Committee from time



to time during the current year, to pay that indebtedness, if there are such funds.

Mr. Sanborn: I think so too.

Mr. Vilas: Then I think the latter part of the resolution, that it should be paid only out of the dues to be collected next year, is not necessary.

Mr. Sanborn: I did not intend that to be considered as part of the resolution.

The President: The serious question is to obviate being one year behind.

Mr. Sanborn: We publish the report for the years 1904 and 1905, now. We now have the material on hand for the report of 1906, and the report of the Committee on Necrology for the three years, I think, which is expected by the Publication Committee to make a full volume. Now we publish that as soon as possible, but we use what funds are now collected, the dues of 1906, to pay for volume six. We use the borrowed funds for volume seven, which will also come out this year. In 1907 we collect the dues for 1907, publish no report and expect that we will use the funds for 1907 to repay the loan; but if we have any surplus funds this year we will apply them on the loan.

Mr. Corrigan: With all due respect to the committee which has offered this resolution, it strikes me that it is not advisable for the Bar Association of Wisconsin, to borrow money. It seems to me that an association of representative lawyers of this state ought to be able and willing to levy such assessments as may be necessary to meet our current expenses, pay for all our reports to be printed, and pay for their printing immediately after the adjournment of the Association. It seems to me it is prudent, instead of

borrowing money, to make a further assessment such as may be necessary, upon the individual members of this Association, to the end that we may do business on business principles.

Mr. W. A. Bennett, of Milwaukee: It is a very healthy sign of any business institution when it has credit to borrow money. I do not know but that our credit will speak better for us than it would to pay cash.

Mr. Vilas: When the Association has borrowed in late years it has not been upon the credit of the Association but upon the credit of the individual members of the Executive Committee.

Mr. Ernest N. Warner: At a recent meeting of the Executive Committee of the Bar Association, Mr. Sanborn and I were designated as a sub-committee to consider how we might publish the proceedings of this meeting immediately after the meeting takes place, rather than have the publication deferred until just before the next annual meeting. It was to meet that desire on the part of the Executive Committee that the matter has been considered and the recommendation to the Association has been made; that to anticipate the dues which will be paid on or before the date of the next annual meeting, we now borrow the necessary money and immediately print the proceedings of this meeting, and take that loan up with the dues which will be paid on or before the date of the next meeting. It is only a question of whether we shall immediately after the various annual meetings publish the proceedings and the papers of those meetings, or whether the publication of the proceedings be delayed nearly a year, and until the dues are actually paid or to be paid before we undertake that publica-

tion. The Association has from time to time considered what dues would be agreeable to be assessed upon the members; and it has been determined after much debate that about \$3 per year for the regular assessment is what the members would be glad to pay. Without doubling that assessment, without any change in the time of payment except as we have already changed our constitution, we will be enabled by this method, in my opinion, to immediately print the proceedings of this meeting, and hereafter be able uniformly to print the proceedings just after the meeting rather than defer them for a year.

The President: If you use the proceeds of your loan now to pay for the expenses of printing the current volume, then a year from now you will be in a position that will require another loan to publish the annual report.

Mr. Warner: The resolution contemplates that next year we do exactly what we have done for the last two years—what we have got to do this year—double the size of our report. We will print no report for the next meeting, nor immediately after, but after the meeting a year later we will print the proceedings of the two years.

The President: With that explanation I think it is the only proper thing to do.

Mr. Sanborn: I have the resolution written out, and in order to get it exactly, I will read it. It is as follows:

*Resolved*, That the Executive Committee of the Association be authorized to borrow in the name of the Association such sum as shall be necessary to secure the immediate publication of volume seven of the reports of the Association, said sum not to exceed \$500.

That is the resolution. I did not intend to limit the repayment of it to any particular fund.

The President: Your thought is that the proceedings of this meeting shall be published immediately, but the proceedings of the next two meetings shall be published in one volume, so as to bring down the cost of the two volumes to the cost of one, and enable us thereafter to print the proceedings shortly after the adjournment of the meeting.

Mr. Sanborn: That is correct. It will be necessary for the next meeting, of course, to follow this action up by authorizing the deferring of the publication as stated.

The President: With the explanation of the treasurer and the chairman of the Publication Committee, what will you do with the resolution?

Motion was made and seconded that the resolution be adopted.

Mr. Corrigan: It seems to me that the publication of the proceedings of the Association a year from now, will have to be deferred until a year from then, so that next year we will be robbed of the opportunity of having an immediate publication of the proceedings of that session. I think that ought to be avoided. I am in accord with what Mr. Warner has said about having these proceedings published immediately after these Association meetings. Therefore I think instead of passing this resolution we should levy a further assessment now and raise money by that means, to the end that the proceedings of this meeting may be published immediately after the meeting is finished, and to the end that the assessment of next year when levied, may meet the expenses of publishing the volume which will follow that meet-

ing; so that hereafter we may have the proceedings of all our meetings published immediately after their conclusion.

The President: Allow me to make this suggestion: we have had this question up before, and an effort was made last year to raise the amount necessary for the republication of the first volume, and we could not do it. The result will probably be the same if you made an extra assessment for this year. It is somewhat doubtful if the plan suggested can be carried out.

Mr. Corrigan: Mr. President, just one further suggestion: I understand that according to the amendment of the constitution adopted last evening, the assessment of 1905 was dispensed with, and in effect that the assessment which we are paying now is for 1906 instead of 1905; that heretofore the assessments have been paid at the end of the year, and that the constitution is now to provide that the assessment is to be paid in advance, so that in effect the assessment of 1905 is dispensed with. Therefore, if the members of the Association were willing to pay now for two years and at once, and not dispense with the 1905 assessment, the changing of the rule will have no effect, except to put us on a financial basis where we can print these reports immediately following the meeting of the Association, without going to the trouble of borrowing the money.

Mr. Vilas: I was present at the organization of this association in 1878. I have had a good deal of participation in one capacity and another in the proceedings, both in the collection and assessment of dues and assessments from year to year, and I can only say that we are in the same position that we always have

been for somewhat like 30 years. If the members will pay their dues there will be no need of borrowing money, nor anticipating current expenses of a succeeding year. There is the whole difficulty. If the members will pay their dues we won't have to borrow money, and we won't have to have these discussions. Now I take it that the suggestion of the committee in fixing the dues is that enough members when they are notified of that change in the constitution will pay up their dues this year to put the Association in the position where it has not got to be begging every year, or raising its dues; and I think we might at least experiment one year longer. It will only make 29 years instead of 28 that we have experimented on that subject. Try it one year more and see if the officers can collect the dues, and if they can nothing need be said about it next year, and the Executive Committee can pay its debt.

Mr. Bennett: I move that the resolution presented by Mr. Sanborn be adopted.

Motion seconded and unanimously carried.

The Secretary: Any gentleman who has noticed any inaccuracy in addresses in the catalogue, will kindly notify the chairman of the Publication Committee. If that is done we will be sure that notices reach our various members promptly.

Senator Lamoreux: I understand there is to be some kind of a banquet to-night. Will you tell us what it is and where it is?

The Secretary: The banquet will be held at the Plankinton at 7:30. The members will convene in the arcade or in the parlor. There will be neat little black boys there to designate the place of convening.

Other people will be there to greet the guests and waiters will be there to do your pleasure.

Mr. Lamoreux: Thank you, sir.

Mr. Bennett: I would like to ask the Secretary if that is the justice court hour or will we be promptly taken care of?

The President: It will be wise for you to be there at the hour named.

Mr. H. M. Lewis: I move that the thanks of this Association be tendered to Chief Justice Cassoday, Hon. J. Hamilton Lewis, and Senator J. M. Whitehead for their interesting and valuable papers read before the Association.

Motion seconded and carried by a rising vote.

Adjourned *sine die*.

## BANQUET PROCEEDINGS.

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The banquet of the State Bar Association of Wisconsin and the Milwaukee Bar Association, in honor of the Honorable James G. Jenkins, was held at the Plankinton House, Milwaukee, March 14, 1906, at 8 P. M.

President Jackson, of the State Bar Association, said: Gentlemen of the State Bar Association, I am quite sure that you will regard it as cause of congratulation that we are permitted to-night to join with the Milwaukee Bar Association in doing honor to an accomplished lawyer, an eminent jurist and a distinguished member of both associations. It gives me pleasure to announce that Honorable J. V. Quarles has kindly accepted the invitation of both associations to preside at this meeting to-night. To the honored guests we extend the most hearty and sincere welcome. I now have the honor of introducing to you Judge Quarles, who will preside over your meeting.

The Toastmaster: Mr. President and gentlemen of the City and State Bar Associations: I esteem it a very great honor that the officers of your organizations have conferred upon me the honor to preside upon this most interesting occasion.

I conceive it to be according to the eternal fitness of things that this organization should embrace its earliest opportunity to pay tribute of respect to one of its oldest living members who has so recently retired from the federal bench.

I think that Judge Jenkins' first case in the supreme



court is reported in the seventh volume, and that was a pretty early date. He was, as you all know, one of the junior members of that great group of lawyers who constituted, if you please, the first generation of lawyers that practiced in our new state, and they were great men. They were men of great constructive ability, they were men who impressed their individuality upon the system they were helping to create.

The gentleman whom we honor to-night was a professional associate of Judge Ryan, Matthew H. Carpenter, Mr. Arnold, Mr. Strong, Mr. Howe, and many others whose name would be familiar to you. In every new state it is the common law lawyer who rises to every emergency; who helps to build the constitution, frame the laws and lay the foundation for a permanent system of government and jurisprudence.

We must remember, my friends, that our distinguished guest was not obliged to yield up a broken sword to the great conquerer, but he put his armor off at that point indicated by the psalmist and by the statute, which is the average limit of human usefulness, but with his spirit unbroken and his intellect undimmed.

It is safe to say that the gentleman who is our guest to-night tried more important cases while he was in practice than any other Wisconsin lawyer. It is no flattery to say that he reached the very front and was at the head of the bar as an advocate in this state.

He was adroit, he was a judge of human nature, he was witty, he was accomplished and learned. He made great addresses to juries, but oftentimes, gentlemen, for we must be candid with each other, when he has been on the other side of a jury case, and has had the

close on me, I have heard him make some very tedious arguments.

But now, gentlemen, this evening a program of very great interest is presented, and I cannot consent to thrust myself between you and the very great pleasure that is in store for you in this attractive program. I am about to introduce to you a young man. You know the old sun worshipers always began their devotions by bowing to the orb of day as he was rising in the east. So society and the bar alike turn to the rising young men who are soon to take our places on the bench and in the forum. I now have the very great pleasure of presenting to you the first speaker of the evening, a young man in the profession who has had peculiar opportunities of becoming well acquainted with the distinguished guest of the evening.

I therefore introduce to you at this time Mr. Benjamin Poss, who will speak to the toast "Our Guest of Honor."

Mr. Poss' response:

Mr. Toastmaster and gentlemen of the Bar Association of this county and this state: It is with some diffidence that I speak upon this occasion. I appreciate that my position could have been more worthily filled by an older member of the bar, one perhaps who had met Judge Jenkins in the legal forum of strenuous combat and could thus from actual experience and observation attest to his high legal attainments. I realize too, that this honor comes to me, not because of any personal merit, but solely by reason of an association with Judge Jenkins—an association I am constrained to express—which has brought to me a deep abiding appreciation of his

character and which has inspired within me a love for the profession and a regard for its high ideals.

While I would fain dwell upon his meritorious personal qualities, I feel that this public occasion forbids. I would speak rather of the place he has occupied in the history of the bar of this state and of his career as a United States Judge.

On April 11th of last year, Judge Jenkins by resignation from his office of United States Circuit Judge, retired from an active professional career of more than half a century. The major part of that period was spent in practice as a member of the bar of this state. It is most fitting and proper then that the associations of this county and state, should join in this gathering, bring him tribute of respect and express appreciation of the distinction and renown which his achievements reflect upon that bar of which he has been so long a member.

His career as a lawyer of this state is coincident with sixty-four volumes of our supreme court reports. The volumes beginning with volume 7, 1858, to volume 71, 1888, both inclusive, are evidence of his activity as a practitioner. During that period the court was presided over by Chief Justices Whiting, Dixon, Ryan and Cole. They were years in which the law of this state was in the making. A formative period that demanded of practitioners a high order of intellect and disciplined powers of imagination. In the realm of text book writing there was happily a condition of race suicide and that species of things did not go forth and multiply. Precedents were few. The code was in a state primeval, seeking the labors of careful application for interpretation. The supreme court of our state has always had the respect

of the appellate tribunals of other commonwealths and that reputation, the bar, which practices before it has the right to share. As a leading member of the bar in this formative period, Judge Jenkins contributed in great measure to the legal lore of this state. Principles of common law, rules of statutory construction, to-day elementary, were first advocated and successfully pressed by him upon the consideration of the court. I cannot in the brief time allotted refer in detail to that long period of his activity, but mere allusion, general as it is, will serve to make appreciable his marked influence upon the law of this state.

From his deserved position at the head of the bar of this state he was promoted to the Federal Bench in the year 1888. To his judicial office he brought the full ripe powers acquired in the stress and struggle of daily professional strife; a broad and comprehensive knowledge of the law; a keen analytical mind trained to follow the dark and tortuous paths of difficult legal propositions into the certain light of correct solution, and those higher qualifications best described in his own words in an estimate of another judge.

"An invincible honesty of purpose, a thorough impartiality, and an utter disregard of all personal consequences flowing from his judicial decree."

First as district judge, later as United States circuit judge, he gave full acquittal of the confidence and honor thus conferred. By virtue of his office he sat as a member at the first session of the United States Circuit Court of Appeals for this, the seventh Judicial Circuit, his colleagues being associate Justice Harlan of the Supreme Court of the United States, and the late Judge Gresham; and the first opinion delivered

by that court, involving admiralty law was the product of his mind and pen. His opinions are found in more than 100 volumes of the Federal Reporter, and all of the C. C. A. reports containing the opinions of this circuit. This circuit is perhaps the greatest center of litigation in the United States, including as it does the great commercial metropolis of the west.

As associate and then as presiding judge of that court, Judge Jenkins' judicial labors were most exacting. Cases of the utmost importance, involving the rights of man and property, pressed for decision. To the accomplishment of that task he brought a master mind, perfection of legal reasoning and liberal learning, a true sense for the application of the theory of the law, and absolute judicial fairness.

His opinions are expressed in decisive manner of speech, in terms of effective brevity, and in a style so luminous that, as has been aptly declared, "they are as clear as a mountain stream."

The history of the law of unfair competition in trade, a department of quite recent development, bears the indelible impress of his judicial learning. High authority declares that the leading case, the opinion written by Judge Jenkins, Pillsbury vs. Pillsbury-Washburn Company, reported in 24 United States Appeals Reports, is a land-mark which will ever be referred to as an authority in the law of unfair competition in trade.

But Judge Jenkins was not a specialist. Reports attest to his broad general comprehension of legal principles in every department of the law. He was an industrious jurist, and even in that dark period of affliction, when the pen was laid down in response to nature's summons, the ever active mind would not

rest, but continued its labors with the aid—inadequate I know it was—of a borrowed eye.

The voluntary retirement of Judge Jenkins from active life is of especial appeal to the younger members of the bar. He comes from a generation of men that knew Ryan, Butler, Carpenter, Dixon, Arnold and others long since gone to a Higher Court. His presence here to-night fires the imagination anew, as the brilliant accomplishments of that past generation are brought into better light and readier focus.

If I may speak on behalf of the young men of the profession, I would upon this occasion, convey to you, Judge Jenkins, the deepest gratitude for your kindness and concern manifested toward the young lawyer. Sometimes, happily, not frequently, the older generation of men forget the trials and uncertainties of the early period of a lawyer's life, forget that we who have just crossed the threshold to enter the inner halls of the profession, will, in habit of thought, of reasoning, of conduct, follow the example and precept that their deeds and conduct present. Each succeeding generation conforms to the mold made by its predecessor. We have the right to look to you for guidance, we have the right to expect from you the finest expression of the ideals of our profession—not that we may win glory and gain for ourselves, but that the legal profession to which has been entrusted in all times the earthly administration of God's justice, may continue on a high plane of effectiveness and nobility.

The regard manifested by Judge Jenkins toward the young men is beautifully expressed in his addresses to graduates of law schools. They breathe a wholesome atmosphere of kindness and affectionate concern.

They are studded with bright jewels of philosophy formed of years of observation and of experience, radiating a glow of hope and encouragement. I have always believed that his appreciation of the young man's greatest need, a thoughtful word and a helping hand, was not only personal but also partook of another and equally fine metal. Back of it is the consciousness that the perpetuation of righteousness, and truth and justice depends upon the perpetuation of the highest ideals and that those who have reached the summits are obligated to give their strength to those who struggle at the base.

I cannot at this point avoid the expression of another thought with respect to the older members of the bar. Sometimes, when young lawyers get together, they will talk about matters not usually discussed when their elders are present. We young men have come to the conclusion, without a dissenting voice, that at the beginning of our careers we know more law than did our elders at the time of their beginnings, at least we are supposed to know more, since the tests required for admission to the bar are very much more severe in this day than they were in yours. That is well illustrated by an examination which was held in the sixties. A general in the Civil War applied at the close of that conflict for admission to the bar of the United States. Pursuant to custom a committee of three examiners was appointed. The committee met, examined the applicant and reported to the court: "We have examined the applicant and he has answered correctly two-thirds of the questions put to him." Now, the judge, it seems, knew of the convivial habits of the applicant, and knew that he was quite ignorant of the law, and was

therefore surprised at the brilliant result of the examination. So he asked the chairman of the examining committee, "Where is the list of questions you asked him, I want to see them?" And the chairman of the committee replied: "Well, your honor, we first asked him 'What is the rule in Shelley's case,' and he answered 'Writing poetry.' That was not correct. Then we asked him, 'What is a contingent remainder and what is a vested interest?' and he answered 'I do not know.' That was correct and so we passed him."

I might on this occasion, also refer to another fact, and that is that examining boards of the present day are not infallible. I remember the examination that I took for admission to the bar. I answered, I thought, most of the questions correctly. While it is not important I might incidentally say that I succeeded in getting by the board. When the papers came back to me, I read some of the questions and answers to Judge Jenkins. I read a certain question and thought my answer was correct, but instead of receiving a ten, which would signify perfection, I received a six; and Judge Jenkins was surprised. He too thought the answer was correct, which only goes to show the influence I was under. Then followed another question and answer. The answer, I thought was correct. Judge Jenkins, thought it was correct, but instead of ten I received another six. Several of these cases occurred—so many in fact, that I ceased reading them to the Judge. But as I looked at the certificate, that was to be my sesame to the profession, I noticed that my name "Benjamin" was misspelled, the "a" and "i" being transposed, and I told the Judge



about that, and he very dryly remarked, "Oh, give 'em a six on that."

I hope the Judge will pardon me for relating another incident. When the operation performed upon his eye was successful and the oculist gave him proof of it by letting him read a newspaper for a few moments, Judge Jenkins, naturally was overjoyed and sent several telegrams to his colleauges on the bench in Chicago. One I think was sent to Judge Kohlsaats and read something like this: "The operation is successful and I can see clean through a patent suit now." Well, one of the bugaboos of the judges of the Federal Court, unless they are specialists in patent law, is a patent law case. Judge Woods, who sat on the bench at that time, had a remarkable mind for just that sort of cases, and in order to obtain his judicial sanction to your patent, you had to prove to him most convincingly that what you had to offer was not a mere mechanical improvement but was an absolutely new device. On the evening of the day that Judge Kohlsaats received this telegram there was being held in Chicago a banquet under the auspices of the patent bar of that city, and Judge Kohlsaats read the dispatch upon this occasion. "The operation is successful and I can see clean through a patent suit now." Judge Woods was present and in the course of the evening one of the members of the bar arose and suggested that it would be a pretty good idea if some of the other members of the bench would undergo a similar operation.

Gentlemen, I know that I reflect the sentiment of the bar of this state in expressing the hope that he who is our guest of honor to-night, may long live to enjoy the merited reward of an honorable life and in

extending to him assurance of our respect, our esteem, and most affectionate regard. You, Judge Jenkins, "dedicated your life to the maintenance of justice among men and your name will be written upon the roll of honor of those who have faithfully served the state."

The Toastmaster: Gentlemen, you will agree with me that my prediction that we should make no mistake in calling upon a young lawyer has been fully vindicated by the very creditable performance of the young gentleman who has just addressed us, and I now purpose calling upon another comparatively young man, and I may say in passing that his career indicates in a most notable manner the wonderful opportunities that are presented in this great land of ours, for ambitious and able young men.

Many of us here remember this gentleman when he was a little tow-headed office boy in the city of Milwaukee, in the office of Cary & Cottrill, serving upon the older members of the bar, the pleadings of that firm with whom he was connected. We have watched his career, not only with interest, but with pride, as he has climbed the great ladder of success and now holds an eminent position at the bar at the head of the legal department of one of the great railway systems of the country; and he will speak to you tonight of another great lawyer who may well be called a legal genius, a man whose fortunes went down with the confederacy, but who had the genius to pluck success out of the jaws of defeat, a man who went, after he became practically ostracised from his own country, by reason of the failure of the lost cause, over to

an older country, and there became the head of the London bar.

I have great pleasure in introducing to you at this time Mr. Burton Hanson, of Chicago, who will speak on the subject of Judah P. Benjamin.

Mr. Hanson's response:

More than a quarter of a century ago, while waiting in the library of the supreme court for a case to be reached for argument, I found myself listening to the Hon. P. L. Spooner, father of our distinguished senator, who was relating to some half a dozen lawyers the incidents of a trip to New Orleans when he was a young lawyer in Indiana. Of the many incidents related, the one which left its impression upon me was the acquaintance he made of two young lawyers of that city, one of whom he said was the most remarkable young man that he had ever met. This young man was Judah Phillip Benjamin; the other was John Slidell.

While spending a delightful evening with Senator Spooner in October last, our conversation about men and events led me to ask the senator whom of all the men he had met, he regarded as the most accomplished and the best equipped man in public life. The senator replied that during his first term in the senate, he had asked Senator Vest the same question, and that he replied by saying that he had then recently asked the same question of Dennis Murphy, who for forty years was the official reporter of the senate, and that Murphy without a moment's hesitation, named Judah P. Benjamin.

To the life of this remarkable man—this man whose transcendent ability was supplemented by a

wonderful personality and an unusual capacity for work, I invite your attention this evening.

Among the foremost of the distinguished lawyers of modern times, stands Judah Phillip Benjamin. He rose from the obscurity of poverty, through the buffetings of adversity, to a position of acknowledged leadership in the law, in two nations, whose jurisprudence commands the highest development of philosophical faculties as well as affords the widest play of forensic ability. Benjamin was a man who, in this country, at a time when the most tremendous tragedy of modern days was breeding a race of intellectual giants, stood out in the quiet forum of the law and the busy scenes of political activity as a master mind among them all. In England, when past the period of life at which most men can make success, he mastered the intricacies of English jurisprudence; by the force of his genius he compelled the recognition of his abilities. And by the side of men who had struggled for a lifetime in the battle, in the few years that were allotted to him there, he won the laurels of such conspicuous victory as few men have earned at the English bar. There must have been something more than ordinary in a man who could adorn with such grace the legal profession of the two foremost nations of the world and participate with such distinguished success in the political fortunes of a cause which seems to have been foredoomed to failure from its earliest inception.

All through the romance of life of Benjamin there runs the minor strain of disaster and adversity, which from the earliest dawn of history, seems to have been the fortune of the Jew. Born of a people who have no country, he fell upon this life as though by acci-

dent, in an out-of-the-way place, to which he became in no wise attached. The accident of his nativity made him an alien in the country to which he gave the best of his ability and for which he underwent the travail of the soul of patriotism.

Benjamin's mind was always completely in domination of his life. He was essentially an intellect. We cannot know the effect prosperity would have had upon his achievements, but we do know that the poverty into which he was born and the adversity through which he lived, made him a worker so tireless and so indefatigable that, even had she been so minded, fate could not have withheld from him the fortune of success which always waits with willing hands on toil. It cannot be said with certainty what change the interruption of his university course, occasioned by the death of his father, may have made in his subsequent career. Certain it is that no mere academic degree could have added to the lustre of his name, and it does not seem that further academic education could have increased what he accomplished. At any rate, while he was in the third year of his course at Yale, his father's death compelled the abandonment of his education in that direction, and, going to New Orleans, he took up the study of the law. In this undertaking the natural and irrepressible industry and persistence of the Jew was spurred on by the irresistible impulse of almost actual poverty. Obstacles have always been the food upon which the Jew has fed, and the necessities which confronted Benjamin at the outset of his career, became the impetus that developed the marvelous and well-nigh incredible capacity for work which was the distinguishing characteristic of this great man's great life. While teaching English

to those who spoke French, in order that in earning the money which his necessities required he might also add to the breadth of his education by acquiring from his pupils the facility in French which he knew was requisite to his success at the Louisiana bar, he met, among his pupils, Miss Nathalie St. Martin, whom he married a year before his admission to the bar in 1835.

He rapidly rose to eminence as a leader at the bar, when the exactions of success in the profession were much severer than they are today; at a period when lawyers were not manufactured with machinery by wholesale; but when admission to the bar meant the mastery of the philosophy and the science of a profession which still clung to its ancient traditions. With marvelous rapidity the recognition of his superior ability forged him rapidly to the front. Fifteen years after his admission to the bar in Louisiana, he declined appointment to the office of Attorney General of the United States, and about five years later refused an offer of appointment to the supreme bench of the United States. It is probable that Benjamin always felt that the arena of statesmanship offered him a larger field for the accomplishment of final results than could be afforded by a position upon the bench even so exalted as that which he declined.

All through his life he seems to have been able to command the favors of fortune almost at will, utterly without the capacity to use success when it was his. His immediate and early success at the Louisiana bar was followed by his retirement to the pursuit of agriculture and he became a sugar planter. Into this occupation he threw the same untiring energy and zeal with which he had pursued the study and the practice

of the law, and he wrote much valuable matter upon the improvement in methods of raising sugar cane and extracting the saccharine matter from it. As a business venture, however, this was a failure, and to that failure is undoubtedly attributable the most interesting epoch of his unique career. It was his business failure upon the farm that drove him back to the practice of the law, and he then became associated with Thomas and John Slidell. This was the direct step to his entrance into politics in Louisiana. In 1853 he was elected to the Senate of the United States as a Whig. When the party of which he had been an adherent was disintegrated by the different movements which drew off its members in various directions, he became a democrat. During all the stirring scenes in congress, preceding the secession of the southern states from the union, he was an active and aggressive participant, and in the debates of those days he wrote his name forever and indelibly upon the tablets of American history. Time has blurred the line that was drawn across the map of this nation in that day; the men who faced each other on the battlefields of our common country have since fought shoulder to shoulder under a common flag, and the bitterness and hatreds of those days have faded away in the mingling of the gray and the blue that has cemented the dismembered nation into an indissoluble whole. When the final history of those days is made up, the presentation of the claims of the cause that was loved and lost will be found to be nowhere more exhaustively or logically set forth than in the speeches of Judah P. Benjamin in the Senate of the United States upon the great measures pending before that body at a time when the destiny of future centuries

rested within its hands. Forceful and brilliant, resourceful and tireless, he was the peer of any debater upon that floor, and he fought valiantly and vigorously for that which he believed both law and right demanded. His farewell speech in the senate upon his retirement in February, 1861, to join the forces and the fortunes of the Confederacy, is one of the masterpieces of oratory in the history of American statesmen.

When the provisional government of the Confederacy was organized, Benjamin was appointed Attorney General in order that the leaders of that government might have the benefit of his learning, research and wisdom. From its inception he was, as he was afterwards characterized, "the brains of the Confederacy." His masterly intellect became such a dominating force in the conduct of his government, that in August, 1861, he was made Secretary of War and placed in actual charge of its principal activities. The capture of Roanoke Island early in 1862 aroused the people of the Confederacy, and Benjamin was bitterly arraigned at the bar of public opinion for what appeared to be the mismanagement of the campaign which resulted in that disaster. Through all this criticism he was calm and serene, and when a congressional investigation of his department was had, he failed to show any justification whatever of a course that seemed attributable only to incompetency. His removal from the position of Secretary of War was forced by this investigation, and in obedience to the demand, Mr. Davis removed him, but immediately appointed him Secretary of State, thus making him the premier of his cabinet. Long years afterwards it was developed that the reason for the apparent inefficiency of the



war department at that time was not the incompetency of the War Secretary but scarcity of ammunition at a time when the troops which were available could not be made effective. Then the heroism and patriotism of the man who was willing to accept in silence undeserved and unmerited obloquy from his countrymen, rather than reveal to them a condition which would have given the Federal forces an immediate and decisive advantage, became pathetically apparent. It almost seems as if, besides being the brains of the Confederacy, Benjamin, the Jew, was also its soul.

When the Confederacy collapsed, Benjamin found himself a man over fifty years of age, practically expatriated from the country to which he had originally been alien, with no land that was his, no people that he could claim, apostate from his religion, married into a race with which he had nothing in common, and into a religion that was the bitter foe of that which might have been his; in all respects, as well as we may judge, hopelessly wrecked as to his career and beyond the age at which most men can start again. Well he might have lamented, with the poet—

“And now I’m all bereft;  
As when some tower doth fall,  
With battlements and wall,  
And gate and bridge and all—  
And nothing left.”

And yet his courage was not daunted. He fled to the West Indies, thence to England to return to the people among whom his fathers had dwelt, and at the age of fifty-five, as a British subject, entered Lincoln’s Inn as a law student and began anew the struggle of

life. From the wreck of his fortunes in the United States, he saved but little money, losing all of his tangible property by confiscation. Writing of it at the time, he said his means were barely sufficient to carry the needs of his family through the shortest period in which he could hope to begin earning again. For the payment of his personal expenses, he depended solely upon his own resources, and we find him writing an article a week for the London Telegraph, for which he received twenty-five dollars each.

Here was a man who had been a leader at the bar in this country and had amassed a competency out of his practice, a man who had been in the senate of the United States and foremost in its councils, a man who had declined a position on the federal supreme bench, a man who had been in charge of the most intricate, diplomatic relations of a government which was seeking a foothold upon the earth, depending upon an income of twenty-five dollars a week to pay the expenses of his legal education at the Inns of Court and to provide for his living. Again the indomitable will and irrepressible persistence of his race came to his aid and again he rose triumphant out of adversity that would have hopelessly overcome men built of less sturdy stuff. And yet so great was his success that his very ability compelled from the leaders of the English bar, a bar which clings most tenaciously to precedent and the established order of things, a dispensation which permitted his call to the bar at the end of five months at Lincoln's Inn, instead of three years, which is usually required.

His manner of living during this time is best shown by a letter written by him to an old friend in this country. It is interesting and I will read it.

"London, 21 February, 1866.

"MY DEAR BRADFORD:—I am now entered as a student at Lincoln's Inn and do not expect to be called to the bar till next fall. I found upon inquiry that it would be more difficult than I had anticipated to get a dispensation from the rules of the different Inns of Court, all of which require the keeping of terms, i. e., three years, before a call to the bar. I felt, of course, that I was not at all prepared to practice under the English law, and after consultation with friends, I concluded that the best plan was to enter Lincoln's Inn, to keep four terms, employing myself in close study, and at the end of that time, (having in the interval made as much interest as I could manage with the Benchers of the Inn) to apply for a special exception and relaxation of the rules in my favor. In the meantime I am making enough to pay for my personal expenses by an engagement to contribute one leading article a week to one of the daily papers, for which I am paid \$25 per week, and am thus enabled to devote the small sum that I was able to save from the wreck, to the maintenance of my family till I can obtain some practice at the bar. I think I have enough, with close economy, to get through three years and by that time may be able to secure a decent practice. I am now in the chambers of Mr. Charles Pollock, son of the Chief Baron of the Exchequer Sir Frederick Pollock. I am very kindly treated on all sides, and was invited by the chief Baron to spend a day with him at his country seat at Hatton. We went down on Saturday p. m. and returned on Monday morning and I spent a most charming day; the old gentlemen, although 83 years old, being as lively and sportive as a boy. You would be greatly amused to

see our dinner at Lincoln's Inn. There are tables at the head of the room for the Benchers, who are the old leaders of the bar, such as Lord Brougham, Lord St. Leonard, Sir Roundell Palmer, Sir Hugh Cairnes, etc. Next come the tables for the barristers, of whom some forty or fifty always are found at dinner. Next the students to the number of about 150, including your humble servant, all seated at long tables, and dressed in stuff gowns, which the waiters throw over us in the ante-chamber before we enter the dining hall. To each four persons, who constitute a mess, the waiter serves a dinner composed of soup, one joint and vegetables, one sweet dish, and cheese, a bottle of sherry or port as choice is allowed to each mess (fiery stuff it is) and bitter beer *ad libitum*. The charge for dinner is two shillings. No one at mess helps another, but the etiquette is, each in turn helps himself, one being first for soup, the next first for the joint, and so on. One dines almost every day with some stranger, but the rule is that all are presumed to be gentlemen, and conversation is at once established with entire *abandon*, as if the parties were old acquaintances.

"When called to the bar I shall take the Northern Circuit, which includes Liverpool, where I hope to get my first start with the aid of some of our old clients there.

"Yours very truly,

"J. P. BENJAMIN."

As though conjured by magic, success at the English bar rewarded his incessant toil and untiring zeal. With incredible rapidity his position was advanced. In 1872 he attained the rank of Queen's Counsel and soon succeeded to a very large and remunerative

practice, his fees amounting to more than ten thousand pounds a year. The demands upon his time and strength soon became so great that he was compelled to refuse cases before the *nisi prius* courts, and confine his practice to cases before the House of Lords, the Judicial Committee of the Privy Council and the Court of Appeal.

In 1883 on account of failing health, he was compelled to retire from further practice of the law. At the time of his retirement a farewell dinner was given in his honor by the bench and bar of England in the hall of the Inner temple, London, which was presided over by the Attorney General, Sir Henry James. It was one of the most notable dinners which the most conservative profession of one of the most conservative nations in the world ever gave to one of its members. Seated at the board to do him honor were the greatest judges and lawyers of his time. His standing as an unquestioned leader of the English bar was recognized by all, and at the end of a life of toil and trouble and disaster and adversity his shield bore the shining legend of honor and success.

As a heritage of his broad deep learning, he left to his profession one of its most notable text books "Benjamin on Sales," which is the accepted authority on that subject on both sides of the Atlantic.

It would be difficult to find in all the annals of the practice, a life more replete with romance, more pregnant with inspiration, more helpful in contemplation than the varied and checkered career of Judah Phillip Benjamin. In the few moments allotted to me, I have been able to do little more than bring to your attention the mountain peaks of this tumultuous career, feeling sure that we, as lawyers, will find pleasure in

perpetuating the memory of this man who added lustre to our profession and enriched it with traditions. The story of the life of Judah P. Benjamin is one which we should not fail to recount to those who are coming after us. It was a life of adversity and toil, but of great honor. It teaches the lesson that a great work demands a great sacrifice and that he who is not capable of a great sacrifice is not capable of a great work. The atmosphere of his life was adversity and the keynote of his success was work. There is much of inspiration for us to draw from such a combination as this, and there is much in this to teach those who are following us, that success in the practice of the law waits patiently upon any man who is prepared to make the sacrifice and who has that infinite capacity for work, which after all is said and done, is genius,—either in the law or out of it.

The Toastmaster: A very pleasant duty now devolves on me. I am about to introduce to you a gentleman who has been serving as corporation counsel in a very wicked city. If there is any community in the western country that needs counsel, I think it is the city of Chicago. But the gentleman who honors us to-night by his presence here, has not only been able to discharge the arduous duties of that position, but he has found time to come up to Milwaukee, and has there stolen away the affections of our people. He has charmed us with the coruscations of his genius and the blandishments of his speech, and we are glad that he is with us this evening, after having entertained us so delightfully this afternoon.

I am authorized to introduce this gentleman now, who will speak to you on the subject slightly changed

from the subject announced in the program, "The Lawer and the Constitution."

Mr. Lewis' response:

Mr. Toastmaster: The flattering compliment you did me when you assumed that these people knew my name, perhaps you did not realize.

The Toastmaster: It goes without saying, that every one knows Mr. Lewis:

Mr. Lewis: I can hardly imagine a more insidious and delightful contribution to my vanity than that.

Gentlemen of the Wisconsin bar, it may be that the city from whence I came deserves the censure and the suggestion of your distinguished toastmaster in noting that she may need counsel, and as he says, badly—or in other words she has bad counsel.

(The speaker was here interrupted by the cracking of the steam heater.)

But I hardly expected that it would be so universally recognized that I would at once receive the bombardment of the heater when I sought to expel this hot air against its cold steam.

I want to be very frank with you. It was not expected that I was to be more than simply one of your guests to-night. I have contributed my performance to your gathering and you have with a lavish hand disclosed to me an entertainment, which, believe me, draws very easily from me a sense of my deep gratitude and affection.

It is not often that the stranger comes into the gates of his fellow people and is received with such a generosity of sentiment as has fallen to my very good fortune.

When a telegram came to me asking what the sub-

ject of my remarks at the banquet would be, I assumed that the very courteous secretary meant to inform me that the proceedings to which I was addressed had been changed and that it had been converted into a night engagement rather than one of day; and I telegraphed him back that which was the appropriate subject of my observations made before you to-day at the gathering of the State Bar Association.

Therefore you will understand that I will not undertake to monopolize the occasion of this meeting, summoned as it is to pay a just tribute to a just man, by involving you in the intricacies of an address touching a question of such fundamental interest as suggested by the title of my toast.

My brother Hanson asks me if I am surprised, and I merely desire to call attention to an incident occurring in a town in Kentucky. A gentleman who had gone to the bar quite under the condition indicated by thoughts of that southern era, and having presented his complaint, and demurrer having been made and sustained, and the privilege of amendment such as prevailing under the Wisconsin code prevailing in Kentucky, the judge being such a manner of man as the one whom you honor to-day, and anxious to aid counsel, and keeping in view the provision that in the event of "surprise" an adjournment may be taken, said to counsel: "Col. Sterling, are you surprised?" "Sir?" "I say, are you surprised?" "Surprised your honor—surprised—by God, sir, I am astonished at such a ruling."

But I take it that it does not matter very much in a gathering of this sort what a man says at night—when the morning comes these gentlemen hardly re-



member it. Which reminds me of a story of our return from Cuba. We stopped on the coast of Louisiana where a gentleman in the service in that part of the country had a negro servant; and one of our crowd after battling all night with the mosquitos said to this negro: "My Lord, I don't understand this. Say, I don't see how you people stand this thing. How does your master stand this anyhow? I can't do it—how does he get through the night, with these mosquitos?" To all of which the darkey replied, "You mean my massa, the general?" "Yes, how does he stand it?" "Well, the fact is boss, it is like this: you know that in the day time the general is so toxicated he don't bother nothing about no skeeters, and in the night time the skeeters are so toxicated they don't bother massa at all neither."

As I remarked a moment ago, it was not intended at all that you should have imported from Chicago this peculiar incident to which my distinguished friend, your eminent federal judge, the toastmaster alludes, and that he should in the performance of the drama as your principal, have invited a curio to give two performances, one matinee in the afternoon, and one at night.

But I would not, if I could, forego the pleasure that is permitted me to extend some word in this collection of just tributes which is to be and has been paid the distinguished and honored guest of this occasion. I look at this board and for myself find a sense of peculiar gratification beholding the men who set about to honor him. I might be permitted to refer to a gentleman who has honored your community at times with his visits, the Honorable Kenesaw M. Landis, the federal judge from the city of Chicago,

who, I may inform you, is the judicial paradox of our community, as he is the concomitant concentration of that unusual combination found in a democratic-republican-federal judge.

I do not know that I owe Judge Jenkins altogether a very full expression of thanks to-night, such as I would love to give him under other conditions, because I confide to you that he was quite responsible for a condition I was compelled to suffer which for a while partook something of a feature of embarrassment to me, and possibly amusement to him. We were on board ship coming from Germany some time ago. It happened that down stairs near the steward's room there was an anarchist, as it was reported. As the days went on passengers would come to me, view me at a distance, and then gravitate away from me. It was a habit of mine to sit with my books at the stern of the ship. Women would come and peep around the corner, and children would flee in refuge to their nurses. Finally when my barren and desolate state became unendurable, and I began to make inquiry, I found that my distinguished good friend, Judge Jenkins, had circulated around the ship the story that I was that anarchist! And of course these passengers readily beholding this visage of mine, and seeing something that fitted to the part, accepted it readily.

But gentlemen, your distinguished toastmaster said that I was to speak (as if I ever did much else) to something of a changed theme and announced the subject of "The Lawyer and the Constitution." And if I must for a moment gravitate to the serious consideration of so elevated and sublime a theme, I feel I should discharge it quite satisfactorily in view of

the hour, if I recall for a moment, the exquisite observation in the unparalleled address which that scholar both of literature, rhetoric and oratory has given in his tribute to Judge Jenkins, where he refers to him as one who has devoted his life to the administration of justice.

We may surround the subject, such as proposed by the distinguished toastmaster to me, with all that history could grace it, and all that illustration could point; but in the final concentration of the thought it would be sufficient that we spoke of those who stood even for justice. The prophet Isaiah saith, "Therefore thus saith the Lord God, behold I lay in Zion for a foundation a stone, a tried stone, a precious corner stone, a sure foundation; he that believeth shall not make haste. Judgment also will I lay to the line, and righteousness to the plummet; and the hail shall sweep away the refuge of lies, and the waters shall overflow the hiding place."

It is evident, brother members of the bar, to us, at this hour, that the architect who must have devised the form of this republican government, took some horoscope of the past and reckoned the broken governments of the world, and (in the words of Victor Hugo) beheld Tarsus, Thebes and Rome, the mere floating spars of the ships of state, which once they were, now upon the great sea of oblivion; and contemplating what was the cause of these great wrecks, sought to mark their misfortune and avoid that which had produced their course. He must have beheld, as one spoke out of Egypt, saying it was a land with a constitution, it is true, but a people without the constitutional courage to maintain it, and beholding that governments, which are not squared to some funda-

mental rock and builded (in the words of the great writer of holy renown) upon some sure foundation, have, when struck with the storm, toppled, trembled and fallen—it was indeed wise of your fathers that they should have profitted from this, and realized that only on this foundation rock designated as the constitution, could our government be builded to perpetuity of glory and immortality; and for that they did found with you upon a rock sanctified in the tears of suffering, a government of liberty consecrated in the blood of children, spread in the battlefield, vale and hill, and surrounded with a consecrated justice of the tried ages; and this rock they christened the constitution of the United States. Upon this rock has been reared the form of government which we cherish, the laws which we obey and profess.

The government at this hour is not without its tribulations, my brothers of the bar. All around us are on the one hand, that class of gentlemen who propose different vagrant remedies for every conceivable ill, and propose the surcease of all governmental sorrow, regardless of whether it fits square to the foundation of the government or conforms to the constitutional laws, the inhibitions, or the exceptions. Along with them are these honored men who propose remedies and theories, which however sincere are apparently unstable and fanciful, and though perhaps suitable to ancient times are inapplicable to the present. Time has demonstrated that we ever return to the eternal answer that we must revert to remedies for governmental ills which are practical and consistent with the humanity within us, and with the accomplishment of the personal effort, industry and genius of man. The hour that must arouse us to a

sense of our danger, is that which seems to be indifferent to the constitution and law, and is willing to temporarily erect devious devices and subterfuges, not only irrespective of the constitution, but despite it.

It behooves you, who have been so long the guardians of the constitution, who have gleaned its benefits and are anxious for its welfare, who have noticed your judiciary seeking to preserve it as a landmark, to watch with care and stand as a guard against these invasions which threaten the destruction of all there is in our form of government and in the habitations of your fathers.

Therefore, you have assembled here to-night to pay your tribute to one of the distinguished scholars of your time in the judicature of the law, and you will find nothing in his distinguished career more worthy of your praise than that he labored diligently and faithfully to preserve the constitution of the fathers and establish the law for the benefit of the sons. He has announced the doctrines upon which the future must be preserved, as the past has been secured. Let us realize to-night that more of his kind is what the country desires, more of his kind is what the hour needs, who, true to their solemn oath to support the law and constitution of our country, will relieve us of all fear of the future; and let us feel that, as the passing sentry of years pacing his rounds upon the watchtower of civilization, shall con the ominous signs of the times and hear ring out from the gate-man the challenge, watchman, what of the night, and give the answer, "All is well,"—God grant that, as the conscience of the constitution has been preserved through the instrumentality of such loyal patriotic public service as the guest you honor to-night, there

may come the answer from a million hearts crying, "Thank God, all is well."

The Toastmaster: Now, gentlemen, I am constrained to do something which is essentially unfair, and that is to call upon a gentleman who has had no notice whatever that he would be called upon to address you on this occasion. I know that you will forgive me and I hope that he will, when we recall the fact that this tribute would, after all, be incomplete without some word from the supreme court of Wisconsin, where the distinguished guest of the evening argued so many cases; and I am therefore going to take the liberty of calling upon Judge Winslow for just a word which may occur to him spontaneously regarding this subject which is so near the hearts of all of us. Judge Winslow, will you honor us?

Judge Winslow's response:

Mr. Toastmaster and gentlemen of the bar: The toastmaster is an ancient friend of mine, once a partner, but he has strained the cords of friendship a good deal by doing what he has just done.

Representing the supreme court of the state it is perhaps proper to say that the court has always recognized that while upon the ordinary questions presented to it, its judgment is final and supreme, and federal courts cannot meddle therewith, when a federal question is presented the state court must bow its head. The question here to-night is undoubtedly a federal question. Therefore I feel that I am compelled to make a speech and that you are compelled to hear it. Even if I wished to escape I find myself surrounded by federal judges. What occult writs

they may have in their pockets in the nature of *mandamus* or *procedendo* which would force me to speak, I do not know.

Long ago when I was studying Greek I remember that the late lamented Homer frequently spoke, as he was describing characters whose eloquence was great, of their "winged words." I have heard those winged words this afternoon and this evening with the greatest of enjoyment. I am not thus gifted myself: I speak slowly—I can hardly keep one stenographer busy.

I confess that the oratorical class in which I find myself this evening is a little too fast for me. I am a little like the man who was asked on a railroad train if he could not change a \$10 bill; he looked up and said, "Well, no, I can't stranger, but I thank you for the compliment all the same."

Now I came down here to sit at the feet of the legal Gamaliels here assembled, and not to speak. I did not expect to speak. The toastmaster told the truth when he told you that I was called upon without preparation.

The business of a judge, from which I have just wrenched myself away to come here this evening, is not one calculated to provoke flights of imagination or airy persiflage. I have been investigating briefs, some of them presented by gentlemen whom I see before me, and I am free to say they were not lightened with anything more than perhaps some of the gladsome light of jurisprudence. They would not do for after-dinner speeches, they even furnish no texts for them.

Quite often, while engaged in this rather dreary occupation, I think of a remark made by Col. Woodward,

whom we all know, as he looked in one day upon our lamented friend, Judge Pinney, who was then upon the supreme bench. The judge was sitting at his desk busily writing an opinion, and Woodward looked in over his glasses (as you all know how he would look) and they passed the compliments of the day, and Woodward said: "Judge, do you know, when I see you in this little room here at work I believe I would rather be a dog and chew rags for a paper mill than have your job." I must say there are times when the work upon the supreme bench seems a good deal like chewing rags for a paper mill. It is true there is occasionally filed a brief in which there is a little play of imagination. I remember one just upon this last assignment. The question involved was the present payment, or the indefinite postponement of the fee of several guardians ad litem. One of these guardians, whose fee was threatened with indefinite postponement, which might last for seventy-five or eighty years, made a pathetic appeal to the court, and he based it upon a picture, a word painting rarely excelled. He pictured the descendants of this deserving guardian ad litem, as little children playing merrily together in the dooryard, surrounded by fragrant flowers and blessed by summers' sweetest smiles.

As the afternoon melts into evening their faithful father appears from his work and greets them lovingly, and the children stop their play, and they hear their father say to their mother: "Maggie, I have good news for you to-day." And she, with a look of surprise, exclaimed: "Why, dear, what is it?" And he, with ill-concealed exultation, says: "Why, only this afternoon I received a dignified letter from that large firm of attorneys down in the new Haring



block, stating that we could, in the near future, expect about \$3,000 in cash." And she naturally inquired, "What for?" And their father rather brokenly said: "Why, my dear, it seems that about sixty years ago, it must have been about 1906, our good old Grandfather Fordyce was a guardian ad litem in the settlement of a large estate, and faithfully performed services for his ward; and now they are finally about to receive their shares, and so the bill is payable, even though he has been dead so long." And as the little ones clapped their hands with joy, and while she from happiness surveyed that quiet home, I can at the same time see the pale, faltering shade of Mr. McNabb (who has long since received his fee) laboriously rise among the willows, and in an uncertain, quavering voice, say: "Your honor, I again object, I only desire to do my duty, and to have this point of law finally settled."

(See foot note for verses read by Judge Winslow.)

This is the only touch of imagination which I now remember in a recent brief.

On reading this brief Henry was noticed to weep, and Kellogg forgot to tax up a bill of costs. It was not observed, however, that any of the judges even cracked a smile. It is pretty clear that many persons do not take Col. Woodward's view as to the burdensome character of the duties upon the supreme bench and this is well demonstrated by a little incident that happened not very long ago, told me by a Milwaukee lawyer. A man came in our court room one day, evidently a stranger, who for the first time had been in the court. He sat down beside the lawyer who was waiting for his case to be called, listening a while to the argument which was being made, turned to the

lawyer and said: "This is the Supreme Court?" "Yes." "Five of them, aren't there?" "Yes." "Well, how much do they get?" "\$5,000 a year." "What! apiece?" I do not know but what that man went home and became an anarchist.

And this naturally reminds me of another story told me not long since, of a discussion between a couple of boys as to their relative merits and necessary abilities of the lawyer and judge. One boy was a son of a judge, and the other a son of a lawyer. I speak advisedly. The discussion waxed quite warm, the boys were at the residence of the lawyer, and the lawyer came in, and they referred it to him—which had to be the biggest man, the judge or the lawyer? Well, the lawyer sat down and explained to the boys the different functions of the judge and lawyer, and wound up by saying, "The lawyer has got to know a great deal; he has got to know the law, and he explains it all to the judge—why any farmer could be a judge."

On behalf of the supreme court of Wisconsin I certainly join in what has been said this evening with regard to our distinguished guest, Judge Jenkins. The bar has a pleasant and a commendable practice after a distinguished lawyer or judge has ceased his labors and joined the great majority, of presenting memorials to the court and entering upon the records of the court our estimate of his ability and his life's work. I say, it is a pleasant practice and a proper practice. At the same time I have often thought, when these eulogies are being presented, how much better it would have been perhaps, had that man been able to have heard some of these kind things said in his life, when he could have appreciated them. A

story is told of the old clergyman who had labored long and hard in his parish for the cure of souls—and successfully—he was discouraged by the apparent lack of appreciation of his work—he wanted some one to tell him that he had done something; he wanted a little appreciation; he mourned over it to a friend as he was visiting him. “Why,” his friend said, “they all love you.” “Well,” he said, “why don’t they tell me so.” He went back to his parish; the story had preceded him, and as he came back he was taken from the train by his parishioners, taken to his house which he found filled with flowers and upon the table there was a great bank of flowers and in it was written in words of flowers, “We love you and we tell you so.”

We come here to-night, Judge Jenkins, all of us, to say to you now: “We love you, Judge Jenkins, for your great life-work and for its influence for good, and now we tell you so.”

“FEES OF ‘GARDEENS’ AD LITEM IN WISCONSIN.”

The following verses were written by Cornelius I. Haring, of the Milwaukee bar, one of the guardians ad litem in the case of Stephenson, et al., vs. Norris, et al. (107 Northwestern Reporter, 343), and read by Associate Justice Winslow, at the banquet of the State and Milwaukee Bar Associations:

One Daniel Wells Junior, a very old man,  
Died in March, nineteen hundred and two.  
He left a long will, and his heirs then began  
To inspect his estate through and through.

The will was probated without much delay,  
The executors qualified too;  
The creditors filed all their claims in a way  
That secured their prompt payment when due.

The dead man appointed as faithful trustees,  
Three friends of his very own sort,  
They brought out the will with the greatest of ease,  
And they asked what it meant from the court.

A lot of "gardeens" ad litem were found  
 To act for young wards, far and near;  
 And they faithfully worked as they felt duly bound  
 To protect every right that was dear.

The court tried the case with the guardians there  
 With trustees and executors too,  
 With lawyers and experts all quite debonnaire,  
 And decided just what each must do.

It held that trustees could do just as they please,  
 That the will meant some things that it said,  
 That each trusty "gardeen" should have pretty good fees  
 And the lawyers should likewise be fed.

Then one brave "gardeen" in a moment of wrath  
 Declared he would take an appeal,  
 And moreover he did, with a very wide swath,  
 The supreme court then turned the "last wheel."

It said that Judge Tarrant was right in the main,  
 That the trustees should manage the wealth;  
 But the poor faithful "gardeens" had such a sad pain  
 When they read the opinions by stealth.

It held that "gardeens" should not labor for hire,  
 But honor should puncture their hearts,  
 That when they were chosen, they never should tire  
 To act to the full all their parts.

It said, furthermore, that each "gardeen" must wait,  
 While the surging years rolled in the shade,  
 And until generations had passed "in the gate,"  
 Then, at last! all their fees would be paid.

Then each sturdy "gardeen" with hot fire in his eye,  
 And murderous tones in his breath,  
 Consigned the applicant to hang up as high  
 As Haman, when struggling with death.

Alas, for the hopes that have shriveled so fast,  
 For the fees that have not yet been paid;  
 A lien, they have, which for ages will last  
 Though the thrill of enjoyment is stayed.

Now, Goddess, descend with Elixir of Youth,  
 While the *man who appealed gets his pay!!!*

May the patient "gardeens" never mangle the truth  
When the devil takes that one away.

May the final climax on his head cast a glow,  
May he get his deserts sure and well,  
When he wakes up at last and in voice thick and low  
He can make no objections *in h—l*.

The Toastmaster: Now, gentlemen, we approach a response which is one of the leading features of this Association, and before we call upon our guest for that response, I want to suggest a toast that we all can rise and drink, a toast involving three sentiments, and three periods, not the seven ages of Shakespeare: First, here's to "Jim Jenkins," our brother of the bar, the strong lawyer, the polished advocate, the loyal friend, and here's to the sacred memories that cluster around the early days. And second, here's to his honor, the judge, who has shed luster upon this Association by the distinguished and fearless manner in which he has discharged his judicial functions. Third, here's to the retired jurist, full of years and honors; may the purple tinge in the western sky pre-  
sage for him only the cool serenity of the summer evening, and may he sojourn with us many years to enjoy *otium cum dignitate*. Now, Judge Jenkins, if you will favor us.

Response of Judge Jenkins.

Mr. Toastmaster: The bar of the state of Wisconsin is preeminently conservative,—more so than the bar of the city of Milwaukee, much more so than the bar of the city of Chicago.

The bar of the city of Chicago is impulsive, its members cannot restrain their enthusiasm. So that on the evening of the very day of my retirement, they

were compelled by their emotional natures, to celebrate the event in rejoicing. The bar of the city of Milwaukee, more conservative and having regard to the eternal fitness of things, postponed the event until the thanksgiving time of the year, when a kind providence was pleased temporarily to lay me by the heels, and to prevent their celebration. But the bar of the state of Wisconsin, with that conservatism which so distinguishes them, concluded to wait until they could determine whether my successor or successor's successor filled the vacancy. And having now concluded that they more than fill it, they meet to rejoice.

But seriously speaking, my brethren of the bar, you have overwhelmed me to-night. I did not know, I did not appreciate that I had any such place in your hearts; and I am put to a disadvantage to know just how to express myself in thanks for your overwhelming kindness.

Possibly I can best get away from the personal element involved by speaking of the condition of things when I first came to Milwaukee. It was then a city of but 35,000 people. On the spot where stands this beautiful hotel was a ramshackle frame hotel that on one glorious Fourth of July went up in flames to celebrate the day. On your business thoroughfares, Grand Avenue, East Water and Wisconsin streets, were mostly miserable little frame buildings for stores. We had no street cars then. We had no John I Beggs to expedite the carrying of passengers. We were then a very provincial city, but we had one thing then that we all should be proud of, and that was a bar that has seldom been excelled in the number of its great leaders, and I suppose that condition of things is so

with respect to all those adventurous spirits that come into a new place to build up a state and an empire. We had no great library in those days. We had five volumes of Wisconsin reports and two of Chandler's reports; we were not obliged to consume the midnight oil to run down the list to see whether a case had been reversed or distinguished. We had but little law in the way of reports so far as the state was concerned; but we had some very great lawyers—some with whom it was my privilege to be acquainted and associated. Of all the lawyers who were practicing when I came here, I believe no one no remains in practice, except possibly Mr. Francis Bloodgood. There are some who are surviving, as Judge Palmer, Mr. Van Dyke, Mr. Mariner and Mr. Stark, who have retired from practice some time, and of those lawyers Mr. Jonathan E. Arnold, Mr. Edward G. Ryan, A. R. R. Butler, and in the year following my coming, Mr. Carpenter, who stood in the front rank of the profession of the state, and they were great lawyers.

Mr. Ryan, for whom I have always entertained the greatest admiration, although he was not the most comfortable man in the world to live with, was a great lawyer—I have never known a lawyer who was so well grounded in the elementary principles of law. I have never seen a man of such force in expounding the law. Mr. Arnold and Mr. Carpenter were builded upon different models. They were great lawyers, and the three of them were great jury lawyers, and yet Mr. Arnold and Mr. Carpenter could much surpass Mr. Ryan in ability to obtain a verdict, because in those days there was a spell of oratory thrown upon the jury with which the court did not interfere and did not restrain, which was very effective, and those men

possessed that gift of oratory. That was before the day when the courts restricted lawyers to the argument of the facts in issue. That was the time when, as the late Judge Orton said, when the case was submitted to the jury the jury was fair game for the lawyer, and it was darned mean in the court to interfere with him.

The blows of Mr. Ryan, whether in addressing a court, or addressing a jury, were like the ponderous blows of the battle axe of Richard Coeur de Lion; while those of Mr. Arnold and Mr. Carpenter were like the keen edge of Saladin's scimeter, that could cut a pillow of down. Mr. Arnold perhaps is less known to the present generation than either one of his two great rivals; but he was a great lawyer, quiet, self-contained, gentlemanly, never disturbed—always looking to his case and to nothing else, never engaged in personal controversies with opposing counsel. He was the man that invented the doctrine of moral insanity in defense of a woman who had killed her lover; and succeeded in having the jury find that a moment before the commission of the act the defendant was sane, at the moment of the commission of the act she was insane, and the moment succeeding the commission of the act she was again sane. That doctrine so announced by him attracted even the attention of the British bar, and was referred to in the the house of parliament in England. He was a wonderful jury lawyer.

The like may be said of Mr. Carpenter, but he and Mr. Ryan were of such different models that comparison is difficult. I doubt if Mr. Ryan ever had much sense of humor. Mr. Carpenter had a great deal of it, and as well a magnetic laugh that served him



greatly on many an occasion, I once heard Mr. Ryan say that he would give \$500 if he had Matt Carpenter's laugh.

I used to frequent Mr. Carpenter's office both before and after my partnership with him, and I will tell you of one incident that will illustrate how effectively he used that laugh to get out of corners into which he was driven. On one beautiful Sunday morning in June I wandered into his office, as I was wont, and we conversed on many subjects, and on that morning we struck upon the subject of the inspiration of the bible. Matt. asserted that it was a great mistake to insist upon that doctrine; that it was a stumbling block in the way of many persons, that there was no necessity of it, that what was true in the bible was true and could be proven and needed no doctrine of inspiration. A few days before that time Mr. Jackson Hadley had died and had been buried. He was a gentleman of great ability, but in those days was said not to exhibit that careful conscientious political action which the moralists of the present day oppose. Combating Mr. Carpenter's argument, I said, "Why, Matt., if I understand the Christian religion at all, its fundamental doctrine is the resurrection of Christ from the dead. Now that a man should rise from the dead is such an unheard of event, so unknown in the history of the world; so counter to all human experience, that in order to make people believe the story you must first convince them that the author of that story is infinite and cannot err." Matt. said: "Oh, shaw, no necessity of that at all. There is plenty of internal evidence in the bible of its truth, and I could convince any jury in the land that it was so." "Well," I said, "suppose on this pleas-

ant Sunday morning while we are sitting here, a hundred of the first men of this city, its merchants, its bankers, its judges, its lawyers, men whose word you would accept without question upon any subject, should come in and tell us that they had been out to Forest Home Cemetery, and were seated around Jackson Hadley's grave, and while so seated Jackson Hadley rose from the dead and sat down and conversed with them, would you believe it?" Matt. found himself in somewhat of a corner and he gave that magnetic, sympathetic laugh, and lay back and said: "Well, no, not of Jackson Hadley."

As was remarked in Chief Justice Cassoday's address this morning, Mr. Carpenter frequently alluded to his affection for Rufus Choate, with whom he studied. He told me that one evening Choate had just returned from court, and a client of his called to have have a contract drawn. Mr. Choate took notes in regard to the matter and told the gentleman to come in the next day and get his contract. He then handed the memorandum to Carpenter and instructed him to draw the contract in the evening and let him see it in the morning before he went to court, which Carpenter did—sitting up till a late hour to do it. In the morning Choate made a few corrections in the draft and told Carpenter to engross it and deliver it to the gentleman when he should call. Carpenter said: "Mr. Choate, what shall I charge him for it?" "Oh," said Choate, "charge him \$25." On Mr. Choate's return from court that evening Mr. Carpenter said, "Mr. Choate, that gentleman came in and asked for his contract, and I told him that you had directed me to charge \$25, and he said he didn't have \$25, he only had \$15. I don't know but that I did wrong, but I

took his \$15 and let him have the contract." Said Mr. Choate: "\$15 was all he had?" "Yes." "And you took that?" "Yes." "Oh, well," said Choate, "that is professional."

My friend Mr. Poss has intimated that formerly it was not so difficult to be admitted to the bar as now, and he has told us of some of the difficult questions that are now asked. When one desired to be admitted to the bar in those days he got a lawyer to move the court to appoint a committee, and of course the court appointed the mover of the proposition and whoever the mover and the judge might select, and then the duty of the applicant according to the tradition of the bar, was to invite this committee to a wine supper at Belden's. That was at the west end of the Grand Avenue bridge—a restaurant, and a very nice one. The examination took place after supper. A friend of mine, Mr. Ralph Chandler, whose father was reporter of the early supreme court was an applicant for professional honors. He secured the appointment of a committee and they met at Belden's and he gave them as fine a wine supper as could be gotten up. At the conclusion of the supper the chairman remarked: "Now, Mr. Chandler, we will proceed to the serious business of the evening, and examine you as to your ability to practice law; and the first question I desire to ask you is this: How would you dispossess a life tenant that held over his term?" To which Mr. Chandler replied that he should marry the widow. That was the only question propounded. He was found duly qualified and admitted to practice.

There was much of pleasure and perhaps more social intercourse, among the members of the bar at that time than now, because the bar is much larger

and the demands on one's time are much more engrossing now than they were then.

After I came there struggled into the profession a lot of boys. I recall Gen. Winkler and Capt. Bean, A. L. Cary and a lot of others of that sort, that are still with us to-day and occupy a very high position at the bar, but they were very young men at that time.

We had Judge McArthur for our circuit judge, the father of Gen. McArthur of the army, a very fine man socially, a Scotchman, an able man when he applied himself, but he was a little inclined to be lazy, and he loved a joke dearly. I remember on one occasion when we were trying a case before him involving the title to the office of the clerk of the board of supervisors, Messrs. Smith and Salomon were on one side and Mr. Carpenter, Mr. J. V. V. Platto and myself were on the other side. It had so happened in the course of the three days' trial, that Mr. Platto had not addressed the court, the burden up to that time having been taken by Mr. Carpenter and myself. We had reached that stage in the case when the court had concluded to beat the relator, represented by Messrs. Smith & Salomon, but to make their record correct for the supreme court they desired to call an inspector of election from the Fifth ward to prove a certain fact; and Judge McArthur asked what fact they proposed to prove, and they stated it. They asked an adjournment until 2 o'clock, and the judge said: "Why, there is no need of adjourning till 2, because you know I will not permit that evidence to be given." "Certainly," said Mr. Smith, "but we must get it upon the record." "Very well," said the judge, take anybody, put him on the stand and call him by

the name of that inspector, and make your offer, and I will rule it out and your record will be straight—take any dummy—Mr. Platto, suppose you take the stand.” And strange as it may seem, Mr. Platto took offense and never was fond of Judge McArthur afterwards.

I remember also during those days, that a law was passed, to get rid, as it was supposed, of what were called professional jurors, the pay being then \$2 a day; the law provided they should have only 25 cents a case, and the professional juror might not earn his 25 cents in three weeks, if he were not called upon a case. Consequently they all sought to be excused. An Irishman was very anxious to get off, and had applied two or three times to Judge McArthur to be excused, but the judge refused—told him that he must perform his duty. Finally he concluded that something desperate must be done in order to be relieved, so he came up to the court this morning with a very lugubrious cast of countenance, and asked his honor to please excuse him, and the judge recognizing him said: “No, sir! I have already refused to excuse you, and I cannot do it; you must perform your duty as a citizen.” “But, if your honor please, it is different this morning.” “What is the matter this morning?” “If your honor please, my mother is dead.” The judge was a very sympathetic man and said: “Certainly, sir, under those circumstances I will relieve you. I am very sorry for your affliction. Mr. Clerk, you may excuse this gentleman for the balance of the term.” And as he went to the door he passed by old Tim O’Brien, who was the leader of the Third ward, and the deputy sheriff on all occasions. Tim, who had heard what he had said to the judge, remarked to him,

"You are a domned liar." But the gentleman replied, "Its no lie, she has been dead these twenty years."

But, gentlemen, I will not detain you. In thinking of those old times these stories come welling up into my memory, and remind me not only of the hard work that we did, but of the pleasure that we took in doing it. However strenuous the legal battle, there was among the members of the bar at that time, the greatest good will. Enmity did not exist, and our bar meetings were characterized by the greatest hilariousness. That has all changed. The style of trying cases has changed. The style of work is changed. I suppose now that the trial by jury in court is quite subordinate to the office work of the lawyer, and that really the ability of the lawyer to-day is shown in his office rather than in trial before a jury.

But in looking back gentlemen, over fifty years of life at the bar, which seems to me much like a dream, I cannot but conclude, what I have always believed, that the legal profession is the grandest profession on earth. Some may speculate on a future life about which nothing is known and nothing can be demonstrated by proof. But the lawyer is obliged to bring to discharge of his duty, accuracy of statement, accuracy of knowledge, a dealing with facts and not with theories. There is no profession, I think, upon earth that is so much entitled to the consideration of the world. The lawyer aids in the formation of states, in the formation of constitutions, in the formation of laws. He adjusts those disputes which are inseparable from life in society, and every effort is made to establish the rights of man upon a sure and unalterable foundation. It should not be, however, that the

lawyer should pursue his profession merely for the gain that is in it. But that his highest ideal of it should be that he is a minister in the temple of justice, and that his highest duty is to impartially and fairly administer God's justice upon earth, and so long as that ideal obtains, so long will the bar stand high in the respect of the people, and so long will they maintain their own self-respect.

If I may proffer a word of advice to my young brethren of the profession: I would say to them that the surest, if not the only means of success, is constant, persistent study; that nothing else will make up for it; that persistent study of the law and of its principles can alone give them ascent up the ladder of the profession and enable them to reach the rung at the top; that they should avoid all sharp practices in the profession, seeking to reach the real merits of a case, seeking to instruct the court and advise the court of the real facts of the case, to obtain a fair, honest decision upon those facts; that the court respects the lawyer who deals fairly with it, and looks askance at the lawers who seek by trickery and sharp devices to avoid honest judgment. That course of life will elevate the mind and purify the thought of every young member of the bar. In retiring from active life I know of no better advice to give my younger brothers in the law than that. That course will redound to honor, the opposite course will lead to dishonor.

Gentlemen of the bar, there is much that I would like to say, but I may not encroach upon the hour. I wish to thank you from the bottom of my heart for all your kindness and confidence. I have lived with my brethren here for nearly a half century, and I

have received naught from them but kindness and confidence, and words of praise, which I fear I have not merited; but in taking leave of you I can say, that I have at least tried to do my duty as I saw it, and I shall go down to my grave when my time comes, believing that the profession of the law is the grandest profession upon earth, and full of thankfulness to you who have made my life so pleasant.

The Toastmaster: It remains only to hear from the federal judiciary, and the gentleman whom I am about to introduce to you I know to be a man of infinite good nature, because he has come here from his own engagements in Chicago to help me out. I know from the lawyers who participated in the cases where he presided, that his efforts were highly appreciated by them, and that he has made among the bar in Milwaukee, already, many friends. Allow me therefore to present to you Judge K. M. Landis, of Chicago, who will speak for the federal court.

Response of Judge Landis.

Mr. Toastmaster and gentlemen of the Wisconsin State Bar Association and of the Milwaukee Bar Association: It was my good fortune one year ago to begin my judicial work in the city of Milwaukee. You gentlemen at that time, which was trying to me and certainly trying to you, were very patient with me, as I recall to-night with very deep appreciation. Considering the midnight hour and knowing something of the sentiment in your hearts, I believe I shall earn your gratitude by simply proposing the health of James G. Jenkins, whose career has shown the federal bench and the state bench that



a great judge may also be a true gentleman on the bench.

(The toast proposed in honor of Judge Jenkins was drunk standing.)

## OFFICERS FOR 1906.

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President—L. J. Nash.

Vice-Presidents:—

1st Circuit—Thomas M. Kearney.

2d Circuit—Charles Quarles.

3rd Circuit—Charles Barber.

4th Circuit—Paul T. Kretz.

5th Circuit—Philo A. Orton.

6th Circuit—R. S. Reid.

7th Circuit—E. E. Browne.

8th Circuit—E. W. Helms.

9th Circuit—John M. Olin.

10th Circuit—Orlando E. Clarke.

11th Circuit—H. H. Grace.

12th Circuit—R. B. Kirkland.

13th Circuit—T. E. Ryan.

14th Circuit—Samuel D. Hastings, Jr.

15th Circuit—C. A. Lamoreux.

16th Circuit—Claire B. Bird.

17th Circuit—R. J. McBride.

18th Circuit—Maurice McKenna.

Secretary—C. I. Haring.

Treasurer—J. B. Sanborn.

### STANDING COMMITTEES.

Executive Committee—L. J. Nash, President; Cornelius I. Haring, Secretary; John B. Sanborn, Treasurer. For one year—Ernest N. Warner, Howard L. Smith. For two years—E. P. Vilas, A. L. Sanborn. For three years—Charles F. Lamb, W. W. Wight.

Judicial Committee—E. P. Vilas, Chairman. For

one year—T. E. Ryan, L. J. Nash. For two years—Frank M. Hoyt, Neal Brown. For three years—George G. Sutherland, P. J. Clawson.

On Membership—Charles F. Lamb, Chairman. For one year—F. W. Houghton, L. W. Halsey. For two years—Calvert Spensley, C. H. Tenney. For three years—George B. Hudnall, W. S. Stroud.

On Amendment of the Law—A. L. Sanborn, Chairman. For one year—L. J. Powell, D. E. Riordan. For two years—N. S. Gilson, Edward W. Frost. For three years—M. G. Jeffris, A. E. Bleekman.

On Legal Education—Howard L. Smith, Chairman. For one year—George F. Merrill, Francis Williams. For two years—Burr W. Jones, Lyman E. Barnes. For three years—Wm. D. Van Dyke, E. W. Chafin.

On Necrology and Biography—W. W. Wight, Chairman. For one year—T. W. Haight, K. K. Kennan. For two years—C. E. Monroe, M. S. Griswold. For three years—F. C. Winkler, M. A. Baker.

On Publication—Ernest N. Warner, Chairman. For one year—J. P. Towne, T. E. Ryan. For two years—M. S. Dudgeon, Emerson Ela. For three years—A. S. Douglas, J. M. Whitehead.

## CONSTITUTION.

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### NAME.

Section 1. The Association shall be called "The State Bar Association of Wisconsin."

### OBJECT.

Section 2. The object of the Association is to maintain the honor and dignity, and to increase the usefulness and influence of the profession of the law.

### MEMBERSHIP.

Section 3. The members of the legal profession in this state whose names shall within sixty days be subscribed to the roll of membership, are hereby declared to be members of this Association.

Any member of the profession in good standing, practising in this state, may become a member by a vote of the Association, as hereinafter prescribed, on signing the said roll and paying the prescribed admission fee. By-laws regulating the admission of members may be adopted.

Section 4. The judges of the several courts of record having civil or criminal jurisdiction in this state and of the United States, are hereby declared to be honorary members of this Association, and may take part in all its deliberations on general subjects. Non-resident members of the profession may be elected honorary members with like privileges.

### REPRESENTATION BY PROXY.

Section 5. Any member in good standing, who is unable to attend any meeting of this Association, may

be represented therein by proxy duly appointed in writing, such proxy being a member of this Association, and a resident of the judicial circuit of the member appointing him.

Section 6. The officers of the Association shall be a President, a Vice-President from each judicial circuit in the state, a Secretary, a Treasurer, and an Executive Committee, consisting of the President, Secretary and Treasurer, and the Chairman of each standing Committee. All of said officers, except the Executive Committee, shall be elected for one year and until their successors are elected. At the meeting of the Association at which this provision shall be adopted there shall be elected two members of the Executive Committee for one year, two for two years, and two for three years, and thereafter two members of such committee shall be elected annually for three years. The standing committee of which each member of the Executive Committee shall be chairman shall be designated at the time of his election. Vacancies occurring in the office of Secretary, Treasurer or Executive Committee, shall be filled by appointment by the Executive Committee, until the next ensuing annual meeting. The President shall be the Chairman of the Executive Committee and the Secretary shall be the Secretary of such committee.

#### DUTIES OF EXECUTIVE COMMITTEE.

Section 7. The Executive Committee shall conduct the affairs of the Association subject to the constitution, by-laws and rules of the Association, and shall carry out all resolutions or directions of the Association. They shall have power to make by-laws for the government of the Association, its officers and committees in all matters; but such by-laws may be

amended, altered or repealed by the Association at any meeting thereof. The Association may also adopt by-laws, and no by-law, alteration or repeal of a by-law made by the Association, shall be altered, changed, modified or restored by the committee.

#### DUTIES OF SECRETARY.

Section 8. The Secretary shall keep a record of the proceedings of all meetings of the Association, and of its Executive Committee, in a book kept for that purpose. He shall preserve all correspondence, and all communications addressed to the Association or to its committee, relating to its affairs, and lay the same before the committee at any meeting thereof. He shall notify officers and members of their election, and conduct the correspondence of the Association under the direction of the Executive Committee, and perform such other duties as may be prescribed by the constitution or by-laws, or as the Association or Executive Committee may direct.

The Secretary shall deposit with the Wisconsin State Historical Society for safe-keeping the records, documents, books and papers of the Association, except such as may be required by the Secretary and Treasurer in the performance of their duties.

#### DUTIES OF TREASURER.

Section 9. The Treasurer shall receive, collect, safely keep and under the direction of the Executive Committee disburse all funds of the Association. He shall report annually, or oftener if required by the committee; shall keep regular accounts of all sums received and disbursed, and shall notify all members in arrears. His account shall at all times be open for inspection of the Executive Committee, and shall be

examined at each meeting of the Association by a special committee to be appointed for that purpose. He shall at the expiration of his term of office, pay over and deliver to his successor in office, or such person as the Executive Committee shall appoint to receive the same, all moneys, books and property in his possession as such officer on demand. He shall perform such other duties as may be prescribed by the constitution or by-laws, or as the Association or Executive Committee may direct.

#### MEETINGS OF THE ASSOCIATION.

Section 10. There shall be a meeting of the Association once in each year, on the third Tuesday of February, and such other meetings as the Association shall appoint, or as may be called by the Executive Committee. The Secretary shall give thirty days notice of all meetings, whether annual or special, except as may be provided by rule or by-law hereafter adopted. The usual parliamentary rules shall govern the meetings of the Association. The admission fee shall be two dollars, to be paid in all cases on signing the roll of members. Annual dues shall be three dollars and shall be payable for each year on or before the annual meeting of that year.

#### ELECTIONS.

Section 11. Elections shall be by ballot. In elections of officers a majority of the votes cast shall elect; in election of members three-fourths of the votes cast shall be necessary to elect.

#### PROCEEDINGS, WHEN TO BE PUBLIC.

Section 12. Proceedings against members or other lawyers, upon complaint, shall be with closed doors. Other deliberations of the meetings shall be open to

the public. In proceedings upon complaints no votes shall be allowed by proxy.

#### MEMBERS, WHEN AND HOW TO JOIN.

Section 13. If any person elected as a member does not, at or before the next annual meeting, signify his acceptance by signing the roll and paying his admission fee, he shall be deemed to have declined to become a member. Any person elected a member may, by letter of attorney, to be filed with the secretary, appoint any member his attorney to sign the roll.

#### STANDING COMMITTEES.

Section 14. There shall be appointed by the president, in the manner herein provided, the following standing committees, which shall consist of six members each and a member of the Executive Committee, who shall be chairman thereof.

1. A Judicial Committee, which shall be charged with the duty of hearing and examining all complaints against members of the Association, and also all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law, and the administration of justice, and to report the same to the Association with such recommendations or suggestions as they deem proper.

2. A Committee on the Amendment of the Law, which shall be charged with the duty of considering proposed changes in the law, and of recommending such as they deem entitled to the favorable influence of the Association, and of conferring with the legislature of the state, or any committee thereof, in respect thereto, when directed by the Association.

3. A Committee on Membership, to which shall be referred for recommendation and report, all applications for membership in the Association.



4. A Committee on Legal Education, on which shall devolve the duty of examining and reporting upon our system of legal education and of admission to the bar, and recommending such changes as they deem advisable.

5. A Committee on Necrology and Biography, who shall report to each annual meeting the decease of any members of the Association who shall have died during the preceding year, and the decease of distinguished members of the legal profession in this state who may not be members of this Association, with such obituary notices as such committee may deem best.

6. A Committee on Publication, who shall, under the direction of the Executive Committee, prepare for publication and cause to be printed the proceedings of the meetings of the Association, with the addresses and papers presented at such meetings, or such part thereof as such committee may deem best.

7. At the meeting of the Association at which this provision shall be adopted, there shall be appointed two members of each of such committees for one year, two members of each such committees for two years, and two members of each of such committees for three years. Thereafter two members of each of such committees shall be appointed annually for three years.

8. Special committees may be appointed by the Association from time to time. Each committee may adopt rules for its government or procedure, subject to the constitution and by-laws. Each of said committees shall make a report at the annual meetings of the Association, and to the Executive Committee whenever required by that committee.

## PROCEEDINGS AGAINST MEMBERS OF THE LEGAL PROFESSION.

Section 15. Whenever complaint shall be made against a member of this Association, by any member or members thereof for any misconduct in his relations thereto, or by any person or against any member of the legal profession admitted to or practicing at the bar in this state, whether a member of this Association or not, for any misconduct in his profession, such complaint may be presented to the Judicial Committee. The complaint must be in writing, subscribed by the member or person making the same, plainly stating the matter complained of, with particulars of time, place and circumstance. The committee shall examine the same, under such regulations as they may adopt, and report their conclusions, together with the evidence in the case, to the Association for such action as the case may require. If the Association shall determine that any lawyer, whether a member of this Association or not, should be presented to the supreme or any circuit court in this state to be dealt with for any misconduct in the profession, the Association shall appoint a committee to prosecute such case in behalf of the Association.

## SUSPENSION, EXPULSION, ETC.

Section 16. Any member may be suspended or expelled for misconduct in his relations to the Association, or in his profession, after conviction thereof, by such method of procedure as may be prescribed by the laws; and all interest in the property of the Association of persons ceasing to be members by expulsion, resignation or otherwise, shall thereupon vest in the Association.

## WHEN TO TAKE EFFECT—AMENDMENTS.

Section 17. This constitution shall go into effect immediately. It can be amended only by a two-thirds vote of the members present in person or by proxy at an annual meeting of the Association.

## SIGNING THE ROLL.

Section 18. A roll for the signature of the members of this Association shall be prepared by the Secretary and be signed by the several members thereof appending to the name of each respectively in appropriate columns, the date of his election to membership, the date of his signature to the roll, the county and place of his residence and his postoffice address. Such roll shall have the following agreement at the head thereof, to-wit: "The undersigned each severally undertakes to become a member of 'The State Bar Association of Wisconsin,' and agrees with the said Association and the several members thereof, to abide by the constitution of the same, and the by-laws which may be adopted thereunder, to faithfully perform the duties of, and honorably demean himself as a member of the Association; and to pay such dues, assessments and fines as may be imposed upon him in accordance with said constitution or by-laws."

## BY-LAWS.

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Article I. Any member of the profession practicing in this state, desiring to join the Association, will forward his application in writing to the Secretary, stating therein his full name and residence, when and where he was admitted to the bar, and where he has since been engaged in the practice of law.

Article II. The Secretary will note upon each application for admission the date of its reception and present all applications received by him to the Committee on Membership at its first meeting.

Article III. The Committee on Membership will, on the first day of the convening of the Association at an annual or other meeting, act upon all applications for admission presented to them, and report to the Association, at its first business session of such meeting, with its recommendation upon each application.

### MEETING OF THE ASSOCIATION.

Article IV. The order of exercises at the annual meeting shall, unless otherwise directed by the Executive Committee or the Association be as follows:

1. Opening address of the President and such other exercises as the Executive Committee shall prescribe.
2. Report of Committee on Membership and election of members.
3. Reports of Secretary and Treasurer.
4. Report of Executive Committee.

5. Reports of standing committees: Judicial Committee, On Amendment of the Law, On Legal Education.
6. Reports of special committees.
7. Nomination of officers.
8. Miscellaneous business.
9. The election of officers.

Article V. No person shall speak more than ten minutes at a time, nor more than twice on the same subject unless by permission of the Association.

Article VI. All reports made, papers or essays read or addresses delivered before the Association, shall be lodged with the Secretary. The annual address of the President, such addresses as may be delivered on invitation of the Executive Committee, and a minute of all proceedings at the annual meeting shall be printed; and such other papers or addresses as the Executive Committee shall direct.

#### MEETING OF STANDING COMMITTEES.

Article VII. All standing committees shall meet on the first day of each annual meeting, at the place where the same is to be held, at such hours as their respective chairmen shall appoint.

Article VIII. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice to be given by him to each member by mail.

Article IX. The Executive Committee shall hold a meeting at such time and place as shall be fixed by the chairman thereof at least sixty days prior to the annual meeting of the Association for the purpose of making such arrangements as they may deem advisable for such annual meeting. They shall immedi-

ately after such meeting report to the Secretary the arrangements made by them, if any, and the Secretary shall give notice thereof to each member of the Association by mail at least thirty days prior to such annual meeting.

## LIST OF MEMBERS.

\* Deceased. † Removed from State.

Adams, Henry W., Beloit  
 Adams, R. K., Milwaukee  
 Alban, Stephen H., Rhinelander  
 Allen, W. J.,\* Milwaukee  
 Anderson, A. W.,† Madison  
 Anderson, J. S., Manitowoc  
 Andrews, H. E., Lodi  
 Angel, Franklin M., Rice Lake  
 Armstrong, Thomas, Jr., Portage  
 Arnquist, Otto W., Hudson  
 Arthur, L. J., Lancaster  
 Arthur, Fred W., Madison  
 Austin, W. H., Milwaukee  
 Aylward, John A., Madison  
 Babcock, David, Fond du Lac  
 Babcock, V. M.,\* Wagon Landing  
 Bagley, William R., Madison  
 Bailey, D. R., Baldwin  
 Bailey, W. C.,† San Jose, Cal.  
 Bailey, W. F., Eau Claire  
 Baker, E. S., Portage  
 Baker, H. C., Hudson  
 Baker, Myron A., Kenosha  
 Ballhorn, George, Milwaukee  
 Bancroft, L. H., Richland Center  
 Barber, Charles, Oshkosh  
 Barber, J. Allen,\* Lancaster  
 Bardeen, Charles V.,\* Madison  
 Barker, John,\* Baraboo  
 Barlow, H. P., Hudson  
 Barlow, S. S.,\* Chippewa Falls  
 Barney, C. R., Mauston  
 Barney, S. S., West Bend  
 Barnes, Lyman E.,\* Appleton  
 Barry, M., Phillips  
 Bartlett, William P., Eau Claire  
 Bashford, John W.,\* Hudson  
 Bashford, R. M., Madison  
 Bass, James W., Milwaukee  
 Beebe, W. H., Milwaukee  
 Beemis, Harry E., Milwaukee

Benedict, C. T., Milwaukee  
 Bennett, John R.,\* Janesville  
 Bennett, W. H., Milwaukee  
 Bentley, F. R., Baraboo  
 Bice, Charles M.,\* Denver, Colo.  
 Billings, Levi J., Rhinelander  
 Bird, Claire B., Wausau  
 Bird, George W., Madison  
 Black, Oscar F., Richland Center  
 Blake, Chauncey E., Madison  
 Blanchard, H. H., Janesville  
 Blatchley, A. H., Milwaukee  
 Bleekman, A. E., La Crosse  
 Bloodgood, Francis, Milwaukee  
 Bloodgood, Francis, Jr., Milwaukee  
 Boland, W. F., Chippewa Falls  
 Borchardt, Francis J., Madison  
 Botkin, S. W.,\* Minneapolis, Minn.  
 Bottum, Elias H., Milwaukee  
 Bowman, Jonathan,\* Kilbourn City  
 Brand, M. H., Milwaukee  
 Brazee, A. C., Milwaukee  
 Brazeau, T. W., Grand Rapids  
 Briesen, E. V.,\* Columbus  
 Bright, Michael S., Superior  
 Briggs, C. W.,\* Milwaukee  
 Briggs, Harry E.,\* Pueblo, Colo.  
 Briggs, M. J., Dodgeville  
 Brigham, J. R.,\* Milwaukee  
 Bright, A. H.,† Minneapolis, Minn.  
 Briks, T. J., Boscobel  
 Brown, Charles N., Madison  
 Brown, Clarence S.,† Chicago  
 Brown, Neal, Wausau  
 Browne, Edward E., Waupaca  
 Brownson, C. A.,\* Burlington  
 Bryant, Edwin E.,\* Madison  
 Bruce, Andrew A.,† Madison  
 Buchanan, D., Jr., Chippewa Falls  
 Buell, C. E., Madison  
 Bump, Elisha L.,\* Wausau

- Bump, Franklin E., Wausau  
 Bundy, C. F., Eau Claire  
 Bunn, Charls W.,† St. Paul, Minn.  
 Bunn, Romanzo, Madison  
 Burchard, C. W., Fort Atkinson  
 Burdge, Richard J., Beloit  
 Burns, Edward E., Platteville  
 Burke, J. F., Milwaukee  
 Burnell, George W., Oshkosh  
 Burnham, F. W., Richland Center  
 Bushnell, A. R., Madison  
 Bushnell, T. H., Hurley  
 Butler, A. R. R.,\* Milwaukee  
 Butler, Harry L., Madison  
 Butler, John A., Milwaukee  
 Buxton, Henry L.,\* Milwaukee  
 Bugbee, Albert L., Shell Lake  
 Burpee, Fred C., Janesville  
 Carbys, J. O., Milwaukee  
 Carpenter, Ed. F., Janesville  
 Carpenter, J. H., Madison  
 Carpenter, Paul D., Milwaukee  
 Carr, Joseph S.,† Chippewa Falls  
 Carter, Charles S., Milwaukee  
 Carter, George B., Platteville  
 Carter, George W., Fond du Lac  
 Carter, Richard, Dodgeville  
 Carter, William E.,\* Milwaukee  
 Cary, Alfred L., Milwaukee  
 Cary, Melbert B.,† New York  
 Cary, John W.,\* Chicago  
 Cassoday, J. B., Madison  
 Castle, B. J., Madison  
 Catlin, Charles L.,\* Hudson  
 Chadbourn, Thos. R.,† Chicago  
 Chafin, E. W., Waukesha  
 Chapin, E. E., Milwaukee  
 Christiansen, C. A., Juneau  
 Churchill, W. H., Milwaukee  
 Chynoweth, H. W.,\* Madison  
 Chynoweth, Thomas B.,\* Madison  
 Clark, A. J., Milwaukee  
 Clark, John M., Milwaukee  
 Clark, John G., Lancaster  
 Clark, John T., Waupun  
 Clark, Orlando E., Appleton  
 Clark, Sat.,\* Horicon  
 Clawson, P. J., Monroe  
 Clementson, George, Lancaster  
 Cochems, Henry, Milwaukee  
 Coe, Clarence C., Barron  
 Coe, H. L., Ozaukee  
 Cody, R. P., Sturgeon Bay  
 Cole, Orsamus,\* Milwaukee  
 Cole, Rublee A., Milwaukee  
 Cole, Willard C.,\* Sheboygan  
 Collins, Alex. L.,\* Gladstone, Mich.  
 Coleman, Elihu,\* Fond du Lac  
 Coleman, N. A., Eagle River  
 Condit, J. T., Chippewa Falls  
 Conklin, W. D., Fond du Lac  
 Connor, Thomas J., Chippewa Falls  
 Connit, H. E.,† Fond du Lac  
 Conover, Frederick K., Madison  
 Conover, O. M.,\* Madison  
 Conway, W. J., Grand Rapids  
 Cook, Amasa G., Columbus  
 Corrigan, W. D., Milwaukee  
 Cottrill, J. P. C.,\* Milwaukee  
 Cotzhausen, F. W., Milwaukee  
 Cox, G. J.,\* Milwaukee  
 Cunningham, John, Janesville  
 Curtis, George, Jr., Madison  
 Curtis, H. H.,\* Merrill  
 Crosten, William,\* Racine  
 Dalberg, Salmon W., Milwaukee  
 Dahl, G. M., Stevens Point  
 Davis, De Witt, Milwaukee  
 Dearborn, H. V.,\* Beloit  
 Dick, James J., Beaver Dam  
 Dickenson, S. N.,\* Superior  
 Dixon, L. S.,\* Milwaukee  
 Donovan, J. F., Milwaukee  
 Douglas, James,†  
 Dow, Joel B., Beloit  
 Downer, F. W., Jr.,† Chicago  
 Downs, William W., Eau Claire  
 Doyle, Peter,\* Milwaukee  
 Dudgeon, M. S., Madison  
 Dudley, Charles L.,\* Madison  
 Dunwiddie, B.,\* Monroe  
 Dunwiddie, B. F., Janesville  
 Dunwiddie, John D., Monroe  
 Dwyer, W. D., West Superior  
 Dyer, Jos. H., Milwaukee  
 Eaton, A., Stevens Point



- Ebbets, W. H.,\* Milwaukee  
 Ekern, Herman L., Trempeleau  
 Ela, Emerson, Madison  
 Eldredge, B. B., Janesville  
 Elliott, Eugene S.,\* Milwaukee  
 Engle, Gottlieb,\* Milwaukee  
 Erdall, John L.,† St. Paul Minn  
 Eschweiler, F. C., Milwaukee  
 Estabrook, C. E., Milwaukee  
 Evans, Wm. L., Green Bay  
 Fairchild, Arthur W., Madison  
 Fairchild, E. T., Milwaukee  
 Fairchild, H. O., Green Bay  
 Fairchild, J. B., Marinette  
 Felker, Charles W.,\* Milwaukee  
 Felker, Frederick,† Oshkosh  
 Fethers, Ogden H., Janesville  
 Field, H. H.,† Chicago  
 Fifield, Charles L., Janesville  
 Finch, H. M.,\* Milwaukee  
 Finch, Earl P.,\* Oshkosh  
 Finch, A.,\* Milwaukee  
 Fish, John T.,\* Milwaukee  
 Fish, A. C., Racine  
 Fisher, Arthur M., Janesville  
 Flanders, James G., Milwaukee  
 Fleming, John B., Eau Claire  
 Flett, David H., Racine  
 Flett, William H.,† Seattle Wash.  
 Ford, Irving T.,\* Milwaukee  
 Foster, William M., Milwaukee  
 Fowler, C. A., Portage  
 Frank, Alfred S., Portland Oregon  
 Frankenburger, D. B.,\* Madison  
 Frawley, Thomas F.,\* Eau Claire  
 Friend, Charles, Milwaukee  
 Frisby L. F.,\* West Bend  
 Frost, Albert S.,\* Waupun  
 Frost, E. W., Milwaukee  
 Frost, G. L., Dodgeville  
 Fulmer, J. A., Madison  
 Gapen, Clarke, M. D., Madison  
 Gaynor, J. A. Grand Rapids  
 Geiger, F. A. Milwaukee  
 Gittings, C. C., Racine  
 Gibson, W. K.,\* Riverside, Cal.  
 Gielens, Henry J., Milwaukee  
 Gilbert, F. L., Madison  
 Gill, Charles R.,\* Madison  
 Gill, Thomas H., Milwaukee  
 Gillen, Martin J., Racine  
 Gilson, F. L.,\* Milwaukee  
 Gilson, Norman L., Madison  
 Gleason, E. F.,\* Ashland  
 Goldberg, B. M., †  
 Goldsmith, E. F. J., Milwaukee  
 Gonski, Casimer, Milwaukee  
 Goodwin, George B.,\* Milwaukee  
 Goodwin, Henry D., Milwaukee  
 Goodland, John, Appleton  
 Gough, Arthur, Chippewa Falls  
 Grace, Harry H., Ashland  
 Grady, Daniel H., Portage  
 Graham, Wilson,\* Milwaukee  
 Granger, Stephen W.,\* Milwaukee  
 Graves, Charles W., Viroqua  
 Gray, Hamilton H., Darlington  
 Green, Wm. F., Milwaukee  
 Greene, George G., Green Bay  
 Gregory, C. N.,† Iowa City, Iowa  
 Gregory, J. C.,\* Madison  
 Griffin, M.,\* Eau Claire  
 Grimm, George, Jefferson  
 Griswold, M. S., Waukesha  
 Guilfuss, C. F., Milwaukee  
 Guppy, J. J.,\* Portage  
 Haight, T. W., Waukesha  
 Hale, Ledyard P.,† Canton, N. Y.  
 Halsey, L. W., Milwaukee  
 Halsey, Pierson H., Milwaukee  
 Hamilton, Charles H., Milwaukee  
 Hammel, Leopold, Milwaukee  
 Hanks, S. C., Madison  
 Hand, Willis,† Phillips  
 Hanitch, Louis, West Superior  
 Hanson, Burton,† Chicago  
 Haugen, N. P., Madison  
 Harding, C. F.,† Chicago  
 Haring, Cornelius I., Milwaukee  
 Harper, J. C., Madison  
 Harshaw, H. B.,\* Oshkosh  
 Hastings, Samuel, D., Jr., Green Bay  
 Hathaway R. C., Oconomowoc  
 Haven, Spencer, Hudson  
 Hayden, Henry H.,\* Eau Claire  
 Hayden, T. F., Milwaukee

- Hayes, Everett A.,† Ashland  
 Hayes, J., Hudson  
 Hayes, J. O.,† Ashland  
 Hayes, W. A., Milwaukee  
 Hays, J. B.,\* Horicon  
 Hazelton, G. W., Milwaukee  
 Haseltine, Willis W.,\* Stevens Point  
 Helms, E. W., Hudson  
 Hemlock, D. J., Waukesha  
 Henning, E. J., Milwaukee  
 Herdegan, Adolph,\* Milwaukee  
 Hicks, J. W., Prentice  
 Hiner, Joseph G.,† Fond du Lac  
 Hooker, Eli, Waupun  
 Hooker, D. G.,\* Milwaukee  
 Hooper, Moses, Oshkosh  
 Hoskins, I. I., Dodgeville  
 Hough, George C., New Richmond  
 Houghton, F. W., Milwaukee  
 Howard, Samuel,\* Milwaukee  
 Hoyt, Frank M., Milwaukee  
 Hoyt, Wm. R., Chippewa Falls  
 Hubbell, Charles B.,† Milwaukee  
 Hudd, Thomas R.,\* Green Bay  
 Hudnall, George B., Superior  
 Hunter, Charles F., Milwaukee  
 Huntington, H. J.,\* Green Bay  
 Hurlbut, Edwin, Oconomowoc  
 Hurley, M. A., Wausau  
 Hutchinson, Buell E.,\* Chicago, Ill.  
 Hyzer, E. M., Milwaukee  
 Ingersoll, George B., Beloit  
 Jackson, A. A., Janesville  
 Jackson, H. B.,† Oshkosh  
 Jackson, W. A., Janesville  
 Jeffris, Malcolm G., Janesville  
 Jenkins, James G., Milwaukee  
 Jenkins, John J., Chippewa Falls  
 Jerdee, M. P., St. Croix Falls  
 Johnson, D. H.,\* Milwaukee  
 Johnson, Edward E., †Milwaukee  
 Johnson, Fred J.,\* Milwaukee  
 Jones, Burr W., Madison  
 Jones, D. F.,\* Sparta  
 Jones, D. Lloyd, Milwaukee  
 Jones, Granville D., Wausau  
 Jones, John T.,\* Dodgeville  
 Kanwertz, W. W., Milwaukee  
 Karel, John C., Milwaukee  
 Kellogg, H. L., Milwaukee  
 Kelly, M. D.,† Green Bay  
 Kelly, Fred.,† Seattle, Wash.  
 Kemper, J. B., Milwaukee  
 Kendrick, C. D.,\* Milwaukee  
 Kennan, K. K., Milwaukee  
 Kanneberg, A., Milwaukee  
 Keenan, T. L., Milwaukee  
 Kennedy, William, Appleton  
 Kerwin, J. C., Madison  
 Keyes, E. W., Madison  
 Kidder, George B., New Richmond  
 King, Angie J., Janesville  
 Kirkland, Robert S., Jefferson  
 Kleist, John C., Milwaukee  
 Knight, Herbert,\* Milwaukee  
 Knoell, F. J., Milwaukee  
 Koeffler, C. A., Jr., Milwaukee  
 Knowles, Geo. P., West Superior  
 Krause, Alfred A., Milwaukee  
 Krause, Max C., Milwaukee  
 Kreutzer, A. L., Wausau  
 Krez, Conrad,\* Milwaukee  
 Krez, Paul F., Sheboygan  
 Kroncke, George, Madison  
 La Follette, Robert M., Madison  
 Lamb, C. F., Madison  
 Lamb, F. J., Madison  
 Lamoreux, C. A., Ashland  
 Lamoreux, O. H., Stevens Point  
 Lander, H. W., Beaver Dam  
 Lander, W. J.,\* Green Bay  
 Lando, M. N., Milwaukee  
 Lanyon, Cyrus, Mineral Point  
 Larson, L. R.,† Eau Claire  
 Laverty, Charles E.,† Milwaukee  
 Law, F. J., Shullsburg  
 Lawrence, George H., Milwaukee  
 Leahy, M. A.,† Milwaukee  
 Lee H. W., Stevens Point  
 Leitsch, W. C., Columbus  
 Lewis, Herbert A.,\* Madison  
 Lewis, H. M., Madison  
 Lincoln, P. L., Richland Center  
 Lines, George, Milwaukee

- Losey, J. W.,\* La Crosse  
 Ludwig, J. C., Milwaukee  
 Luscombe, Robert, Milwaukee  
 Luse, Louis K., Superior  
 Lynch, Thomas,\* Antigo  
 Lyon, Jay F., Elkhorn  
 Lyons, Thomas E., Superior  
 MacBride, R. J., Neillsville  
 Mack, Edwin S., Milwaukee  
 Malone, Booth M.,† Denver  
 Mann, Charles D., Milwaukee  
 Manning, W. S., Muscoda  
 Manwaring, E. B., Menomonie  
 Marchetti, Louis, Wausau  
 Mariner, E., Milwaukee  
 Markham, George C., Milwaukee  
 Markham, H. H.,† Milwaukee  
 Markham, Stuart H.,† Milwaukee  
 Marsh, S. M., Neillsville  
 Marshall, R. D., Madison  
 Martin, C. K.,\* Milwaukee  
 Mason, Vroman, Madison  
 Masters, C. H., Sparta  
 Matheson, Alexander E., Janesville  
 Maxon, Glenway, Milwaukee  
 Maxwell, John S., Milwaukee  
 McCaslin, L. W.,† Kansas City, Mo.  
 McConnell, J. E., La Crosse  
 McLeod, Arthur W., Washburn  
 McDill, George D., Osceola Mills  
 McDonald, W. H., Hudson  
 McElroy, Horace, Janesville  
 McElroy, W. J., Milwaukee  
 McIlhon, Charles W., Mineral Point  
 McGovern, F. E., Milwaukee  
 McGowan, Emmet D., Janesville  
 McKenna, Maurice, Fond du Lac  
 McKenney, J. C.,\* Milwaukee  
 McMynn, Robt., Milwaukee  
 McMullen, J. F.,† Milwaukee  
 McMullen, J. E., Chilton  
 McNally, H. F., Muscoda  
 McNamara, F. L., Hayward  
 Mead, L. H., Shell Lake  
 Meggett, Alexander T., Eau Claire  
 Menzie, Silas W., Beloit  
 Merrill, George F., Ashland  
 Merton, Ernest, Waukesha  
 Messerschmidt, J. E., Madison  
 Miller, Benjamin K.,\* Milwaukee  
 Miller, Benjamin K., Jr., Milwaukee  
 Miller, George P., Milwaukee  
 Miller, Samuel S., Whitehall  
 Millet, Daniel C., Prairie du Chien  
 Mills, George,† Prairie du Chien  
 Mills, J. M.,\* Lancaster  
 Mills, J. T.,\* Lancaster  
 Miner, James H., Richland Center  
 Moe, Ernest S., Milwaukee  
 Mouat, Malcolm O., Janesville  
 Monroe, Charles E., Milwaukee  
 Morgan, Henry H., Madison  
 Morris, Charles M., Milwaukee  
 Morris, Howard, Milwaukee  
 Morris, W. A. P., Madison  
 Morris, W. H.,† Minneapolis, Minn.  
 Morrow, J. M.,\* Sparta  
 Morsell, Arthur L., Milwaukee  
 Morton, Geo. E., Milwaukee  
 Mowry, Duane, Milwaukee  
 Mulberger, Henry, Watertown  
 Murphey, N. S.,\* Milwaukee  
 Myers, George H.,\* Appleton  
 Mylrea, William H., Wausau  
 Naber, E. H., Milwaukee  
 Nash, L. J., Manitowoc  
 Neelen, Neele B., Milwaukee  
 Nohl, Max, Milwaukee  
 Nolan, Thomas S., Janesville  
 Norcross, John V.,† Chicago  
 Norcross, Pliny, Janesville  
 Norris, William H., Jr., Green Bay  
 North, Jerome R., Green Bay  
 Noyes, George H., Milwaukee  
 Nye, Frank M., Clear Lake  
 O'Connor, Geo. E., Eagle River  
 O'Connor, J. L., Milwaukee  
 O'Meara, Patrick, West Bend  
 O'Neil, James, Neillsville  
 Ogden, Lewis M., Milwaukee  
 Olin, John M., Madison  
 Ollis, John, Madison  
 Olwell, Lawrence W., Milwaukee  
 Ordway, David S., Milwaukee  
 Orton, J. J.,\* Milwaukee  
 Orton, P. A., Darlington

- Osborn, C. F., Darlington  
 Packard, W. H., Stevens Point  
 Palmer, B. H., Janesville  
 Palmer, W. G., Boscobel  
 Parish, J. K., Medford  
 Parker, Barton L., Green Bay  
 Parkinson, A. C., Columbus  
 Parkinson, Frank E., Madison  
 Parks, Warham,\* Oconomowoc  
 Patchin, M. B., New London  
 Pease, Harlow, Watertown  
 Pease, Lyman S., Milwaukee  
 Peltage, G. W.,† Chicago, Ill.  
 Pereles, James M., Milwaukee  
 Pereles, Nathan,\* Milwaukee  
 Pereles, Thomas J., Milwaukee  
 Peters, William H.,\* Montello  
 Peterson, E. F., Janesville  
 Pfund, Herman, Madison  
 Phelps, M. M.,\* Janesville  
 Phillips, M. C., Oshkosh  
 Pierce, Chas. E., Janesville  
 Pierce, S. W., Friendship  
 Pierce, Humphrey, Appleton  
 Pinney, Silas U.,\* Madison  
 Pope, Carl C., Black River Falls  
 Pope, Ralph C.,\* West Superior  
 Pors, William A.,\* Marshfield  
 Poss, Benjamin, Milwaukee  
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 Powers, James A., Milwaukee  
 Pratt, John M. W., Milwaukee  
 Prentiss, Guy C., La Crosse  
 Pride, C. A., Milwaukee  
 Price, John, Jr., Wonewoc  
 Price, William T.,\* Black River Falls  
 Provia, Alexander, Boscobel  
 Putney, Frank H., Waukesha  
 Quarles, Charles, Milwaukee  
 Quarles, Joseph V., Milwaukee  
 Rahr, E. G., Milwaukee  
 Ramsey, G. A., Kilbourn City  
 Rapay, John S., Milwaukee  
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 Reese, Samuel W.,\* Dodgeville  
 Reed, Myron A., West Superior  
 Reid, A. H., Merrill  
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 Rogers, W. H.,† San Jose, Cal.  
 Rogers, J. H., Portage  
 Rood, John C., Beloit  
 Rosa, Charles D., Beloit  
 Rosenburg, Marvin B., Wausau  
 Rosendale, Samuel, Milwaukee  
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 Rountree, H. H., Platteville  
 Rubin, Wm. B., Milwaukee  
 Ruger, William, Janesville  
 Ruger, William, Jr., Janesville  
 Runge, Karl, Milwaukee  
 Rusk, Lycurgus J., Chippewa Falls  
 Russell, Charles C., Milwaukee  
 Ryan, Hugh, Milwaukee  
 Ryan, Thomas C., Wausau  
 Ryan, T. E., Waukesha  
 Sale, J. W., Janesville  
 Sale, L. B.,\* Green Bay  
 Sanborn, A. L., Madison  
 Sanborn, A. W., Ashland  
 Sanborn, John B., Madison  
 Sawyer, H. W., Hartford  
 Scheiber, Fred., Milwaukee  
 Schley, Bradley G.,\* Milwaukee  
 Schmidt, Henry P., Milwaukee  
 Schmitz, A. J., Milwaukee  
 Schubring, E. J. B., Madison  
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 Seaman, William H., Sheboygan  
 Seeley, J. W., Waupun  
 Shea, W. F., Ashland  
 Sheldon, Henry T.,† Madison

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 Shepard, Charles E.,† Seattle  
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 Sheridan, Philip, Green Bay  
 Shontz, G. M., Richland Center  
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 Sloan, Henry S., Edgerton  
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 Smith, E. P.,\* Milwaukee  
 Smith, George B.,\* Madison  
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 Smith, Howard L., Madison  
 Smith, J. B., Madison  
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 Ungent, Alfred A., Chilton  
 Upham, H. A. J., Milwaukee  
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Wall, John A.,* Milwaukee	Williams, George L., Milwaukee
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Wheeler, William G., Janesville	Woodward, Wm. H. Watertown
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White, James S., Milwaukee	Witte, R. S., Milwaukee
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Widvey, T. J., La Crosse	Wright, A. F., Ashland
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## APPENDIX.

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SOME OF THE SOURCES OF THE DECLARATION  
OF RIGHTS IN THE CONSTITUTION  
OF WISCONSIN.

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ADDRESS BY A. A. JACKSON, PRESIDENT OF THE  
ASSOCIATION.

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*Gentlemen of the Wisconsin State Bar Association:*

On the 15th day of December 1847 there assembled at the City of Madison, the capitol of the Territory of Wisconsin, a convention composed of sixty-nine of the most eminent and distinguished citizens of what is now the state of Wisconsin. These men had come to this portion of Northwest Territory from twelve different states and three foreign governments. Twenty-five were born in the state of New York, twenty-four in the New England states and seven in foreign countries. These men represented the most important interests of the territory. They were charged with the duty of framing a constitution for a new state. It was of paramount importance that the result of their labors should not only be satisfactory to the citizens of the territory but that it should be acceptable to congress, and at the same time aid in promoting the growth and development of the new state then to be formed. Nineteen lawyers, skilled in the making and enforcement of laws were sent to this convention to aid in giving suitable expression and proper form to the result of its deliberations. A similar convention had been held in 1846, and the result

of its labor submitted to the people who had declined to adopt it. The convention of 1847 was therefore called to accomplish what the one of 1846 had failed to do. The effort of the second convention was successful and the constitution prepared by it was submitted to the people in 1848 and adopted. This constitution with some amendments that have been made necessary by the rapid development of, and changing conditions in the state, remains a monument to the wisdom, prudence and forethought of the body of men who formed that convention.

The convention commenced its deliberations on the 15th of December, 1847, and completed its work on the 1st day of February, 1848. It was in session only about forty days. It must be apparent to those who are familiar with the labor of drafting, perfecting and adopting so important an instrument as the constitution of a state that it is not probable that the various provisions of that constitution were drafted, perfected and wrought into so perfect and harmonious an instrument by the men composing that convention in so short a period of time. The convention must have availed itself of the labor and experience of other similar bodies.

One of the most important chapters in the constitution of 1848, is the first containing the declaration of rights. It is my purpose at this time to briefly call attention to some of the sources of the various provisions of this declaration of rights.

The constitution of the United States and of twenty-nine states had been adopted prior to 1848. Many of these constitutions had been revised and amended. The ablest statesmen and jurists of the country had given these constitutions the most profound thought

and careful consideration. The early colonists were constitution makers. They were careful students of the charters of their colonies. They began the preparation and adoption of compacts, articles of association and governmental instruments immediately on their arrival in this country and were experienced constitution makers when independence was declared.

The members of the convention of 1847 were, therefore, not without guides. Nearly all of the constitutions that had been adopted prior to 1847 contained declarations of rights, and abundant suggestions in aid of the labors of this convention. The statesmen who prepared the declarations of rights found in the early constitutions became experts in phrase making. No more compact, comprehensive, clear and incisive forms of expression are to be found in English literature than in these declarations of rights.

The declaration of rights adopted by the convention of 1847 constitutes the first chapter of the constitution of 1848. It contains a brief, compact and comprehensive statement of the important principles constituting the foundation of republican government and is of great interest to every student of constitutional law. It is so comprehensive in its scope, so accurate in expression and so compact in form that it at once invites attention. The importance with which it was regarded by the convention is indicated by the place given it at the very beginning of the Constitution.

The length of the session and the very brief consideration given to this declaration of rights by the convention as shown by its journal leads to the conclusion that the convention availed itself of the labors of others and at once provokes inquiry as to its sources.

The first section declares that:

"All men are born equally free and independent, and have certain inalienable rights; among these are life, liberty, and the pursuit of happiness; to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

This extremely important declaration is a fitting prelude to the constitution adopted by the convention. It is the very foundation of free government.

Civil liberty in its larger sense, had not existed in the colonies prior to 1774. The subject, however, had received constant attention and serious consideration. Every oppressive act on the part of the mother country had stimulated thought and inquiry, and tended to concentrate and solidify public opinion in the colonies on the subject of their civil rights.

By the first section of "The Body of Liberties" of Massachusetts it was declared that:

"No man's life shall be taken away, no man's honor or good name shall be stayned, no man's person shall be arrested, restrayned, banished, dismembered, nor in anyways punished; no man shall be deprived of his wife or children, no man's goods or estate shall be taken away from him, nor in any way indamaged under couler of law or countenance of authority unless it be by vertue or equitie of some expresse law of the country warranting the same."

Three charters of Virginia were granted by James I to Thomas Gates and others. The first in 1606, the second in 1609, and the third in 1611. The last two charters granted the territory north-west of the Ohio River, and embraced the present state of Wisconsin. The territory forming this state was a part of Vir-

ginia from 1609 to 1784 when it was ceded to the general government.

Early in 1774 action was taken by the House of Burgesses of Virginia toward holding a general continental congress of the colonies. All of the colonies joined in the movement and the congress met in Philadelphia on the 5th of September of that year. On the 14th of October this congress adopted a declaration of rights, in which they declared that the inhabitants of the colonies "by the immutable laws of nature, the English constitution and their several charters, are entitled to life, liberty and property," and that these "indubitable rights and liberties" can not be taken from them without their consent.

On the 6th of May, 1776, a convention composed of the House of Burgesses of Virginia met at Williamsburgh, and on the 12th of June adopted a bill of rights prepared by George Mason, the first section of which declares:

"That all men are by nature free and independent and have certain inherent rights, namely, the enjoyment of life and liberty."

This bill of rights contains many provisions found in later declarations of rights. It was adopted twenty-two days prior to the adoption of the Declaration of Independence and is therefore of great interest.

The Declaration of Independence adopted by the Continental Congress on the 4th of July, 1776, declared:

"That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."



On the 18th of September, 1776, Pennsylvania adopted a constitution which contained a declaration of rights, the first sentence of which was adopted by our constitutional convention of 1847, declaring that:

"All men are born equally free and independent."

This declaration in the form that it was made in our constitution of 1848, was adopted by Vermont in 1777, by New Hampshire in 1792, by Ohio in 1802, by Indiana in 1816, by Illinois in 1818 and by Maine in 1820.

The second sentence of section 1 of the constitution of 1848 was adopted by Virginia in 1776. The substance of the whole section was adopted prior to 1848 by Pennsylvania, Vermont, Massachusetts, New Hampshire, Ohio, Indiana, Illinois, Maine, Arkansas, Florida, New York and Iowa.

The second section of the declaration of rights of 1848, declares that:

"There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crime, whereof the party shall have been duly convicted."

The same provision was contained in the constitution prepared by the convention of 1846. It was copied from the constitution of Ohio adopted in 1802. The provision in the constitution of Ohio was copied with a slight verbal change from the ordinance of 1787 which declared that:

"There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted."

Similar provisions are found in the constitutions of Iowa and Michigan adopted prior to 1848.

The third section of the declaration of rights of 1848, declares that:

“Every person may freely speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libel the truth may be given in evidence, and if it shall appear to the jury that the matter charged as libellous be true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.”

This section is the same as that found in the constitution of 1846, with the exception that in the constitution of 1848, the word “criminal” is inserted before the word, “prosecutions” and the words “to the jury” after the word “evidence,” in the constitution of 1846 are omitted in the constitution of 1848. It is not found in any prior constitution in the precise form given it in the constitution of 1848, but the general declaration that “Every person may freely speak, write and publish his sentiments on all subjects, being responsible, or liable for the abuse of that right or liberty,” is found in nearly every constitution adopted prior to 1848. The last sentence of this section declaring that “the jury shall have the right to determine the law and the fact,” was copied from the constitution of 1846, and from the constitutions of New York of 1821 and 1846 and from the constitution of Michigan of 1835. Similar declarations are found in the constitutions of Delaware, 1792; Tennessee, 1796; Ohio, 1802; Missouri and Maine 1820; Mississippi, 1832; Arkansas, 1836; and of New Jersey, 1844.

The whole section as found in the constitution of 1846 was copied from the constitution of Michigan of 1835. On the 25th of September 1789 Congress proposed ten amendments to the constitution of the United States, which were ratified by eleven states prior to the 15th of December 1791. The first of these amendments declared that Congress should make no law abridging the freedom of speech or of the press.

At about the time of the adoption of this amendment much conflict of opinion existed in relation to trials for libel in England. Lord Mansfield had held that it was the province of the judge alone to determine the criminality of the libel, and that the jury could only determine the fact of publication and whether the libel meant what it was alleged in the indictment to mean. The controversy was settled by the passage of the Libel Bill of Mr. Fox in 1792. The discussion in England was not without influence in this country and lead to the adoption of the declaration in the first amendment to the constitution of the United States in 1789-1791, and to the adoption of the principle by the state of Delaware in 1792, and by other states at later dates.

The fourth section of the declaration of rights declares that:

“The right of people to peaceably assemble to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.”

The first sentence of this section is copied from the constitution of 1846.

The section as reported by the committee of the convention of 1847, was the same as the section in the constitution of 1846. On December 30th, 1847, it was,

on motion of F. S. Lovell, amended so as to read as now found in the declaration of rights in the constitution of 1848.

The right of petition has been exercised in England from the earliest times. Parliament exercised the right of petitioning the king in 1623, by the adoption of what was called the Petition of Right, in 1673, the exercise of the right was regulated by a royal proclamation. The bill of rights adopted by parliament in 1689, declared:

“That it is the right of the subject to petition the king, and all commitments, and prosecutions for such petitioning are illegal.”

The above section was in substance adopted by Pennsylvania and made a part of its declaration of rights in 1776, and by twenty-two states prior to 1848.

The first amendment of the constitution of the United States, adopted in 1789, declared that Congress should make no law abridging “the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

One of the most important and interesting provisions of the declaration of rights in the constitution of this state is the fifth section, which declares that:

“The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy, but a jury trial may be waived by the parties, in all cases in the manner prescribed by law.”

The sixth section of the declaration of rights of the constitution of 1846, declared that:

“The trial by jury may be waived by the parties in civil cases in the manner prescribed by law.”

The sources of the trial by jury are involved in great obscurity and uncertainty and cannot now be definitely traced to any well defined origin. The country in which it had its beginning is not definitely known. It seems to be settled, however, that at the beginning of the custom, jurors were selected from those who had some knowledge of the controversy to be determined and were witnesses and not jurors in the modern sense, and that they were summoned to aid the court in deciding the controversy because of their knowledge of it.

Prof. Lee in his *Historical Jurisprudence* in speaking of trials relating to lands in Ancient Babylonia, says:

"The witnesses were more than witnesses. They seem to have been a sort of a jury. It was they who adjudged the property to the legal owner. They served much the same purpose as that served by the jury in the earlier forms of English procedure where they were witnesses and jury as well."

Suggestions of trials by persons other than judges, or in aid of judges are found in the history of many nations. Trial by jury is said to have existed among the Franks in the Carlevingian period; to have been introduced into Normandy by Rollo, and to have been in use by the Anglo-Saxons.

A very probable explanation of the origin of jury trials among the Anglo-Saxons and Normans is found in the fact that in those early days writing was practically unknown among the common people. The protection of their rights was in the knowledge of the community. It became important that all business transactions be made known to the public. When controversies arose the knowledge of the public took

the place of written instruments. When courts were called upon to decide controversies members of the community were called by the court to advise it of the facts. Those prominent and reliable in the communities were naturally selected. A limit as to the number to be called was necessarily fixed and thus resulted a custom of calling a fixed number of the wise men of the community to advise the courts of the facts in each controversy involving the rights of the members of the community. The frequent calling of such men gradually settled into the custom of calling the same men who ultimately were regarded as officers, whose duty it was to keep advised of the affairs of the community. When such a custom became established and recognized, these approved witnesses would naturally be sought out by those making bargains and sales and their transactions explained. These witnesses would thus come to take the place of written instruments and when controversies arose they were naturally called to give the facts, and thus perform a very important duty in the community and their office become a recognized portion of the unwritten or common law.

These men came to be known as "lawmen." Maitland in his "Doomsday Book and Beyond" says: "Law required that there should be standing witnesses in a borough before whom bargains and sales should take place. Such a demand might hasten the formation of a small body of doomsmen. In Cambridge there were lawmen of thegnley rank; in Lincoln there were twelve lawmen; in Stamford there had been twelve, though at the date of Doomsday Book there were but nine; we read of four *judics* in York; and of twelve *judics* in Chester. So late as 1275, the twelve lawmen of

Stamford lived in the persons of their heirs and successors." It is probable that when written instruments came to be used and publicity was not so important the custom of having lawmen in each borough as witnesses ceased and the function of these lawmen gradually changed from that of witnesses to that of triers. In the reign of Henry II which commenced in 1154, trial by jury took the place of trial by battle and by compurgation in all matters of business. By the constitutions of Clarendon (1164) it was provided that:

"If a dispute shall arise between a clerk and a layman in respect of any tenement which the clerk wishes to bring to frankalmoign, but the layman to a lay fee, it shall be concluded by the consideration of the King's Chief Justice on the award of twelve lawful men."

By Magna Charta (1215) it was provided, that:

"No free man shall be seized or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land."

This provision is construed as recognizing and firmly establishing the right of trial by jury in England.

When the law required a unanimous verdict a novel procedure was sometimes adopted by the Normans to secure it. Hale in his history of the Common Law says:

"By the law of England, in cases of trials by twelve men, all ought to agree, and any one dissenting, no verdict can be given; but by the laws of Normandy tho' a verdict ought to be given by the concurring consent of twelve men, yet in case of dissent or disagreement of the jury, they used to put off the lesser

number that were dissenters, and added a kind of *tales* equal to the greater number so agreeing, until they got a verdict of twelve men that concurred, and we may find some ancient footsteps of the like use here in England, tho' long since antiquated."

The right of trial by jury was recognized in the colonies at an early day.

The first reference to trials by jury in the colonies is found in the records of the Plymouth Colony which was adopted on the 17th day of December, 1623, and provides:

"That all criminale facts, and all matters of trespasses and debts between man and man should be tried by the verdict of twelve honest men to be impanelled in forme of a jury upon their oath."

Goodwin says:

"Trial by jury was thus for the first time established as the right of every one."

This remark should be confined to the colonies. Prior to 1623, trials had been conducted by the whole body of the townsmen, with the governor presiding.

In 1658 the above provision was re-enacted in the following form:

"That all trialls whether capitall or between man and man be tryed by jewryes according to the presidents of the law of Eng. as neer as may be."

In a revision of the laws of New Plymouth made in June, 1761, in a chapter entitled, "The General Fundamentals" the above provision was revised as follows:

"That all trials whether capital, criminal or between man and man, be tried by jury of twelve good and lawful men, according to the commendable cus-



tom of England; except the party or parties concerned do refer it to the bench," etc.

By an act of the assembly of Virginia in 1642 it was provided:

"That if either plt. or deft. shall desire the verdict of a jury for the determining of any suite depending with any of the courts of this colony, he or they shall signifie therein their desire by petition under his or their hands unto the said courts before said cause had any hearing."

By the code of laws adopted by Connecticut in 1650, it was provided that:

"In all cases that are tryed by juries it is left to the magistrates to impannell a jury of sixe or twelve, as they shall judge the nature of the case shall require and if four of sixe, or eight of twelve, agree, the verdict shall be deemed to all intents and purposes sufficient and full."

Section 76 of the "Body of Liberties" of Massachusetts, adopted in 1641, declared that:

"Whensoever any jurie of trialls or jurors are not clear in their judgments or consciences concerning any cause wherein they are to give their verdict they shall have libertie in open court to advise with any man they think fitt, to resolve or direct them, before they give their verdict."

The colonial laws of Massachusetts provided that:

"In all cases where the law is obscure so as that the jury cannot be satisfied therein, whether it be a grand or petty jury, they have liberty to present a special verdict, viz.: If the law be so in such point we finde for the plaintiffe, but if the law be otherwise, we finde for the defendant, in which case the determination doth properly belong to the court."

Section 8, of the "Frame of Government of Pennsylvania," adopted in 1683, declared:

"That all trialls shall be by twelve men, and as near as may be, peers or equals, and of the neighborhood."

The bill of rights of Virginia adopted June 12, 1776, declared:

"That in controversies respecting property and in suits between man and man the ancient trial by jury is preferable to any other and ought to be held sacred."

The ordinance of 1787, contained the following provision:

"The inhabitants of said territory shall always be entitled to the benefits of the writ of *habeas corpus* and of the trial by jury."

The seventh amendment to the Constitution of the United States adopted in 1784, provides that:

"In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved."

Section 12 of the judiciary act of the United States, 1789, declares that:

"The trial of issues in fact in the circuit courts shall, in all suits, except those of equity, and of admiralty, and of maritime jurisdiction, be by jury."

The constitution of all of the states, adopted prior to 1848, contain references to trial by jury. The declaration that "The right of trial by jury shall remain inviolate" was first used in the constitution of Tennessee adopted in 1796. After that date and prior to 1848 it was introduced into the constitution of thirteen states. An equivalent form of expression is found in the constitution of eight other states.

The words "without regard to the amount in controversy," in the constitution of 1848, are not found in any constitution adopted prior to 1848.

The last sentence of the section providing that "a jury trial may be waived by the parties in all cases" is not found in any constitution prior to 1848.

The constitution of 1846 provided that:

"A jury trial may be waived by the parties in all *civil cases*."

This provision was copied from the constitution of New York adopted in 1846.

The sixth section of the declaration of rights declares that:

"Excessive bail shall not be required, nor shall excessive fines be imposed nor cruel and unjust punishments inflicted."

The law requiring bail undoubtedly had its source in the belief that persons under arrest should not be permitted to go at large without furnishing some security that they will appear before the court when required. The taking of bail was originally in the discretion of the sheriff. Various statutes relating to bail were passed by parliament prior to 1689 when the bill of rights of William and Mary was adopted.

In the preamble of this bill of rights it is recited:

"That excessive bail has been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects, and excessive fines have been imposed and illegal and cruel punishments have been inflicted."

In the operative part of the bill it is declared:

"That excessive bail ought not to be required, nor excessive fine imposed, nor cruel or unusual punishments inflicted."

The first protest of the colonies against cruel and unjust punishment is found in the "bill of liberties" of Massachusetts adopted in 1641, which declares that:

"For bodili punishments we allow amongst us none that are inhuman, barbarous or cruel."

~~The first~~ protest against excessive fines in the colonial governments is section 18 of the laws of Pennsylvania adopted in England in 1682. This section declares:

"That all fines shall be moderate."

The punishment inflicted in England at the time of the settlement of the colonies and under James II, were very severe, while the punishments inflicted in the colonies were much less severe they came to be regarded as unnecessarily harsh. When the colonies came to adopt state constitutions an opportunity was presented to prohibit severe and cruel punishment.

The first of the state constitutions referring to excessive bails and fines and cruel punishments is that of Maryland adopted November 11, 1776. Section 22, of the declaration of rights, declares:

"That excessive bail ought not to be required nor excessive fines imposed nor cruel or unusual punishments inflicted by the courts of law."

On the 18th of December, 1777, the constitution of North Carolina was adopted. It contains a declaration of rights; the 10th section of which declares:

"That excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted."

In the 8th amendment of the constitution of the United States adopted September 25th, 1789, it is de-

clared: "Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted." By changing the word "ought" in the constitution of Maryland and the word "should" in the constitution of North Carolina to "shall" in the 8th amendment of the constitution of the United States the provision is changed from a declaration of principle to an imperative command. Delaware, in her constitution of 1792, copied the 8th amendment of the federal constitution, except the words "and unusual." Tennessee in 1796, copied the declaration of the federal constitution.

The constitution of Wisconsin of 1848 is a copy of the 8th amendment of the federal constitution with the exception that in the constitution of Wisconsin the word "shall" is inserted after the word "nor" where it first occurs in the section, and the word "unjust" in our constitution is substituted for the word "unusual" in the federal constitution.

Nearly all of the constitutions adopted by other states prior to 1848 contain similar declarations.

Section 7 of the declaration of rights in the constitution of 1848, provides among other things that the accused shall enjoy the right to be heard by himself and counsel; to process to compel the attendance of witnesses in his behalf and to a speedy public trial by an impartial jury.

These provisions are substantially the same as those contained in the constitution of 1846.

The first reference to criminal trials in this country that I have found is section 5 of the "Charter of Privileges" of Pennsylvania granted by William Penn in 1701. This section declares "that all criminals shall

have the same privileges of witnesses and council as their prosecutors."

The same provision is found in the charter of Delaware granted by William Penn in 1701.

Virginia was the first state to adopt a constitutional provision on this subject. In her constitution adopted June 12, 1776, is found this declaration:

"That in all criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor and to a speedy trial by an impartial jury of twelve men of his vicinage without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself."

The sixth amendment to the constitution of the United States provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state or district wherein the crime shall have been committed . . . and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel."

Similar provisions are found in the constitutions of a majority of the states adopted prior to 1848. The constitutions of Kentucky, Tennessee, Ohio, Indiana, Alabama, Missouri and Arkansas, contain practically the same provision as our constitution of 1848, with a slight difference in phraseology.

The eighth section of the declaration of rights in the constitution of 1848, declares:

"That no person shall be held to answer for a crim-

inal offense unless on the presentment or indictment of a grand jury," except in certain cases mentioned; that no person, for the same offense, shall be put twice in jeopardy of punishment nor be compelled in a criminal case to be a witness against himself and that the writ of habeas corpus shall not be suspended except in certain cases mentioned.

These provisions are substantially the same as those contained in the constitution of 1846 on the same subjects. The section was amended in 1870, by striking out that portion relating to presentment and indictment and inserting the words, "without due process of law." This amendment was made for the purpose of permitting the passage of a law relating to the summoning of grand juries.

The first sentence of this section as amended is not found in any constitution adopted prior to 1870. It is however, in substance, contained in the constitution of several states.

The second sentence of the first paragraph declaring that "no person, for the same offence shall be put twice in jeopardy of punishment" was, with a slight change in phraseology, copied from the constitution of 1846.

Section 42 of the "body of liberties" adopted by Massachusetts in 1641 declares that:

"No man shall be twise sentenced by civil justice for one and the same crime and trespassse."

The above provision of the constitution of 1848 is not found in any constitution adopted prior to 1848, in the form contained in our constitution, but the substance of it is found in the constitutions of several states.

That portion of section 8, declaring that no person

shall be compelled to be a witness against himself in any criminal case, was copied from the constitution of 1846, and is found in the fifth amendment to the constitution of the United States, and in the constitution of New York of 1846, and in substance, in the constitution of Alabama 1819; of Connecticut 1818; of Delaware 1831; of Kentucky 1792; of Maryland 1776; of Mississippi 1817; of Pennsylvania 1838; of Tennessee 1834; of Vermont 1793; and other states.

The custom of England of interrogating persons charged with crime was regarded by the colonies as seriously objectionable and when they came to form state governments they were especially careful to prohibit the extension of the custom in this country.

In *Brown vs. Walker* (161 U. S. Rpts. 591), Justice Brown in delivering the opinion of the court, said: "So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the states, with one accord, made a denial of the right of questioning an accused person, a part of their fundamental law."

That portion of section 8 that declares that, "All persons shall before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident, or the presumption great," was copied from the constitution of 1846.

Section 8, of the inquest of the sheriff, adopted in England in 1170, declares:

"And let all who have been accused of anything be placed under bond and surety to appear before the lord king at a time which shall be appointed for them and to do the right and redress the king and to his men what they ought to redress, and let those without sureties be held in custody."



The right to bail before conviction was also a common law right and refusal of bail when the accused is entitled to it was an offence at common law.

Blickstone says:

"To refuse or delay to bail any person bailable, is an offense against the liberty of the subject, in any magistrate, by the common law, as well as by the statute. Westm. 1, 3. Edw. 1, C. 15."

Hawkins says:

"The offense of denying, delaying or obstructing bail, when it ought to be granted; this seems to be a misdemeanor, not only by the statutes, but also by the common law."

The provision in the constitution of 1846, was copied from the constitution of Alabama 1819; of Maine 1820 and New Jersey 1844. A similar provision is found in other constitutions adopted prior to 1848.

That portion of the section declaring that "The privileges of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require," was copied from the constitution of 1846.

In the Roman law a proceeding similar to *habeas corpus* was in use. The form of the edict of the praetor was: "I order you to bring before me the free person whom you in bad faith detain."

The writ of *habeas corpus* is a common law writ. It is claimed that it was embraced in sections 39 and 40 of magna charta. The use of the writ was looked upon by the sovereigns with disfavor. A prompt execution of the writ was often delayed upon one excuse or another. In Darnel's case in the reign of James I, the court of the King's Bench decided that persons held under a warrant from the privy council

by special command of the King would not be released, upon habeas corpus.

These evasions of the common law right to the writ led to the passage of the famous Habeas Corpus Act by Parliament, in the reign of Charles II, providing for prompt and efficient execution of the writ in all proper cases.

Article 7 of chapter 6 of the constitution of Massachusetts adopted in 1780 provided that:

“The privilege and benefit of the writ of habeas corpus shall be enjoyed in this commonwealth, in the most free, easy, cheap, expeditious and ample manner, and shall not be suspended by the legislature, except upon the most urgent and pressing occasions and for a limited time, not exceeding twelve months.”

The above provision was adopted by New Hampshire in its constitution of 1784, with a change in the period of limitation from twelve to three months.

Section 9 of the declaration of rights in the constitution of the United States adopted in 1787, declares that:

“The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”

This provision was adopted by our constitutional convention in 1847 except the word “it” at the end of the provision. Many other states have adopted the same or similar provisions.

Section 9 of the declaration of rights in our constitution of 1848 declares that:

“Every person is entitled to a certain remedy for wrongs or injuries to his person, property or character, and that he ought to obtain justice freely and without delay.”

This section is not found in any prior constitution in the precise form that was adopted by our constitutional convention.

A similar declaration in substantially the same form, is contained in the constitution of Massachusetts of 1780, and in the constitution of Rhode Island of 1842.

Section 10 defines the crime of treason and declares that:

“No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.”

This section was copied from the constitution of 1846.

It is also found in the constitution of Delaware of 1792; of Kentucky of 1792; of Connecticut of 1818; of Maine 1825; of New Jersey 1844; and in the constitution of Louisiana of 1812, with a slight verbal change in the first sentence.

Similar provisions are contained in the constitutions of many of the states adopted prior to 1848.

Section 11, declares that:

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizure shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.”

This section is an expression of a portion of the common law of England. It is embraced in the fourth amendment of the federal constitution. The constitution of Indiana of 1816 contains the same provision. A similar provision was contained in the constitution

adopted by the convention of 1846 and is found in the constitution of other states.

In the early part of the eighteenth century a practice had been adopted in England of issuing general warrants without naming any person in particular, upon which persons were arrested. The legality of these warrants came under consideration in the court of the Kings Bench in 1763 in *Money vs. Leach* and were held void for uncertainty.

It is said the decision of the Kings Bench was, doubtless, the origin of the fourth amendment of the federal constitution, and of similar provisions in state constitutions.

Section 12 declares that:

"No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts shall ever be passed, and no conviction shall work corruption of blood, or forfeiture of estate."

This section is a copy of a section in the constitution of 1846, except that in the constitution of 1848 the word "obligation" is substituted for the word "validity" in the constitution of 1846.

This section in the form contained in the constitution of 1848 is not found in any prior constitution but the substance of it is found in the constitution of several states.

The important provisions of this section are those prohibiting the passage of ex post facto laws, and laws impairing the obligation of contracts.

The first reference to ex post facto laws is found in the constitution of Maryland adopted in 1776. It declares:

"That retrospective laws, punishing facts committed before the existence of such laws and by them only

declared criminal, are oppressive, unjust and incompatible with liberty; wherefore no ex post facto law ought to be made."

The same provision was adopted by North Carolina in its constitution of 1776.

The constitution of the United States adopted in 1787 declares:

"No bill of attainder or ex post facto law shall be passed."

A similar provision is found in nearly all of the constitutions adopted prior to 1848.

The constitution of the United States also declares that:

"No state shall . . . pass any . . . ex post facto law."

The provision of section 12 declaring that no "law impairing the obligation of contracts shall ever be passed" is contained in the constitution of 1846, with the exception that the word "obligation" is substituted in the constitution of 1848 for the word "validity" in the constitution of 1846.

The constitution of the United States declares that no state shall pass any "law impairing the obligation of contracts."

The constitution of South Carolina of 1790 declares that:

"No law impairing the obligation of contracts (shall) ever be passed by the legislature" of that state.

The ordinance of 1787 for the government of the Northwest territory, declares:

"That no law ought ever to be made or have force in the said territory, that shall in any manner whatever interfere with or affect private contracts or en-

gagements, bona fide, and without fraud previously formed."

The constitution of South Carolina of 1790 declares that: "No law impairing the obligation of contracts (shall) ever be passed by the legislature." This is the first adoption of this prohibition in the constitution of any state. Kentucky adopted a similar provision in her constitution of 1792; Tennessee inserted in her constitution of 1796 the provision adopted by Kentucky. Similar declarations are now found in the constitutions of other states.

Section 13 declares that:

"The property of no person shall be taken for public use without just compensation therefor."

This section was taken from the constitution of 1846, which was copied from the constitution of Connecticut of 1818, and the constitution of Michigan of 1835.

Section 8, of the "Body of Liberties," adopted by Massachusetts in 1641 declares that:

"No man's cattel or goods of what kind so ever shall be passed or taken for any publique use or service, unless it be by warrant grounded upon some act of the generall court, nor without such reasonable prices and hire as the ordinari rates of the countrie do afford."

The provision is a restraint upon the exercise of the right of eminent domain by the government. The principle involved is of paramount importance.

Blackstone says:

"Upon this principle the great charter has declared that no freeman shall be disseized or divested of his freehold, or of his liberties, or free customs, but by the judgment of his peers or by the law of the land."

Story says:

"This is an affirmance of a ~~great~~ doctrine established by the common law for the protection of private property."

Section 14 declares:

1. All lands to be allodial.
2. That feudal tenures are prohibited.
3. That leases of agricultural lands for a longer term than fifteen years shall be void, and
4. That all fines and restraints upon alienation reserved in any grant shall be void.

This section is not in the constitution of 1846. That instrument, however, contained a provision declaring,

"That all leases or grants of agricultural lands for a longer period than twenty years, hereafter made in which rent or service of any kind shall be reserved, shall be void."

That portion of section 14, declaring all lands to be allodial was copied from the constitution of New York adopted in 1846. It is not found in any prior constitution.

The terms "allodial" and "allodium" were used in the Anglo-Saxon law of real property to indicate the tenure by which the lands were held.

They probably came from "alod" or "allod" meaning an allotment, and were applied to lands held in absolute ownership, and not in dependence upon any proprietary right, and free from all burdens. The allod could be conveyed by grant or will, and if not conveyed descended to the heirs. Maine says it was the joint property of the father and his sons.

Allodial, as used in our constitution means that lands are held by absolute ownership.

That portion of the section declaring that "feudal

tenures are prohibited" is not found in this form in any prior constitution. Feudal tenures were abolished in England, December 24, 1660, by 12, Charles II ch. 24.

The constitution of New York of 1846, contains this declaration:

"All feudal tenures of every description with all their incidents are declared to be abolished."

The clause of section fourteen declaring "that leases of agricultural lands for a longer period than fifteen years shall be void" is not found in any prior constitution. A similar provision is found in the constitution of New York of 1846, fixing the period of limitation at twelve years.

That portion of the section declaring all fines and restraints upon alienation void is substantially the same as section 15 of the declaration of rights in the constitution of New York of 1846.

All fines for alienation in England were abolished December 24, 1660 and by 12, Charles II, ch. 24.

Section 15 declares that:

"No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment or descent of property."

The constitution of 1846 declared that:

"Foreigners who are or may hereafter become residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and descent of property as native born citizens."

This provision is the same as that found in the constitution of Iowa of 1846.

The constitution of North Carolina of 1776 contained the following declaration:

"That every foreigner, who comes to settle in this



state, having first taken an oath of allegiance to the same, may purchase, or by other just means, acquire, hold and transfer land, or other real estate."

This declaration was omitted from the constitution of North Carolina of 1868.

Section 16 declares that:

"No person shall be imprisoned for debt, arising out of, or founded on a contract, express or implied."

Section 1, of act number 37 of the territorial laws of 1838 declared:

"That all laws which authorize a *capias ad satisfaciendum* to be issued against the body or bodies of any debtor or debtors shall be, and the same are hereby repealed."

The constitution of 1846, contained the following declaration:

"No person shall be imprisoned for debt in this state."

The declaration in the constitution of 1848, is found in no constitution adopted prior to 1848.

The constitution of Pennsylvania adopted in September, 1776, declared that:

"The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, bona fide, all of his estate real and personal for the use of his creditors."

This provision was copied by North Carolina in its constitution of 1776, and by several other states prior to 1848.

The limitation that no person shall be imprisoned for debt arising out of, or founded on a contract, express or implied, seems not to have been embraced in any state constitution prior to 1848.

Section 17 declares that:

"The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted."

No similar provision is contained in the constitution of 1846.

The constitution of Texas of 1845, contains the following declaration:

"The legislature shall have power to protect, by law, from forced sale a certain portion of the property of all heads of families. The homestead of a family, not to exceed two hundred acres of land (not included in a town or city or in any town or city lot or lots) in value not to exceed two thousand dollars, shall not be subject to forced sale for any debts hereafter contracted."

No similar provision is found in any other constitution prior to 1848.

Section 18 contains five declarations relating to religious toleration and freedom of worship.

It declares:

1. The right of every man to worship Almighty God according to the dictates of his own conscience, shall never be infringed.

2. Nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent.

3. Nor shall any control of, or interference with the rights of conscience be permitted.

4. Or any preference be given by law to any religious establishments, or mode of worship.

5. Nor shall any money be drawn from the treasury

for the benefit of religious societies or religious or theological seminaries.

The constitution of 1846 contained the following provision:

"The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind."

When the puritans sought a new home on the western shores of the Atlantic the religious intolerance of the preceding century had not wholly ceased. Nor was the puritan spirit wholly tolerant. A growing feeling of tolerance, however, was manifest. This feeling received a strong impulse, and was greatly strengthened by the conviction and banishment of Roger Williams from Massachusetts in 1635, for having "divulged divers new and dangerous opinions against the authority of the magistrates."

He fled from his home at Salem to Narragansett Bay, where he planted a colony called Providence Plantation. It has been said that "The grand doctrines of *liberty of conscience* was then a portentous novelty, and it was the glory of Roger Williams that he, in such an age, proclaimed it, defended it, suffered for it, and triumphantly sustained it."

The influence of the tolerant spirit of Williams prevailed to such an extent in the new colony that in the first charter granted by Warwick in 1643 the colonists were given "full power and authority to rule themselves."

The second charter of Rhode Island granted by Charles II, in 1663, declared that:

"All and every person and persons may from time to time, and at all times hereafter freely and fully

have and enjoy his and their own judgments and consciences in matters of religious concernment throughout the tract of land hereafter mentioned."

The concessions of East Jersey of 1665, contains a similar declaration.

The constitution prepared by John Locke in 1669 declares that:

"No person whatsoever shall molest, disturb or persecute another for his speculative opinions in religion, or his way of worship."

The charter of Massachusetts Bay granted by William and Mary in 1691, contained this provision:

"We do by these presents for us, our heirs and successors grant, establish and ordain that forever hereafter there shall be a liberty of conscience allowed in the worship of God to all Christians (except papists) inhabiting or which shall inhabit or be residents within our said province or territory."

The bill of rights adopted by Virginia on the 12th day of June, 1776, declared that:

"All men are entitled to the free exercise of religion according to the dictates of conscience."

The ordinance of 1787 provides that:

"No person, demeaning himself in an orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory."

The first amendment to the constitution of the United States, adopted in 1789 declares that:

"Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof."

Similar provisions are found in the charters and in nearly all of the constitutions adopted prior to 1848.

The second clause of section 18 declares that no man "shall be compelled to attend, erect, or support any place of worship or maintain any ministry against his consent."

This provision in the form found in section 18 is not contained in any prior constitution, but is, in substance, in the Pennsylvania charter of 1701, the Pennsylvania constitution of 1776; the constitution of North Carolina of 1776; and in other later constitutions.

The fourth clause of section 18 declares "no preference shall be given by law to any religious establishments or mode of worship."

The constitution of New Jersey adopted in 1776, contains this declaration:

"There shall be no establishment of any one religious sect in this province in preference to another."

The constitution of Delaware and North Carolina contain similar declarations.

The fifth clause of section 18 that no "money shall be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries," is not contained in any prior declaration of rights.

The first paragraph of section 19 provides that:

"No religious tests shall ever be required as a qualification for any office of public trust."

This provision is a copy of the first paragraph of section 17, of the bill of rights of the constitution of 1846, with word the "public" inserted before the word "trust," thus limiting its application to public trusts.

The constitution of the United States declares that:

"No religious test shall ever be required as a qualification to any office or public trust under the United States."

The provision as contained in the constitution of the United States was adopted prior to 1848 by several states.

The second paragraph of section 19, declares that:

“No person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion.”

This paragraph in the form contained in the constitution of 1848 is not found in any prior constitution.

It is with a slight change in form, contained in the constitution of 1846, and in the constitution of New York and Iowa.

Section 20 declares that:

“The military shall be in strict subordination to the civil power.”

This provision was copied from the constitution of New Jersey, 1844.

Similar provisions were contained in the constitutions of Connecticut, Delaware, Maine, Pennsylvania and other states prior to 1848.

Section 21 declares that:

“Writs of error shall never be prohibited by law.”

No similar provision is contained in any prior constitution.

Section 22 declares that:

“The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles.”

This section is not contained in the constitution of 1846, nor in any prior constitution in the precise form adopted by the convention of 1847. It was, however, undoubtedly suggested by a section in the bill of

rights of Virginia, adopted June 12, 1776, which is as follows:

"No free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."

Similar provisions are contained in the constitutions of New Hampshire, 1792, and Vermont, 1793, and in other early constitutions.

Prior to 1848 nearly every fundamental principle of representative government had been examined and introduced into some constitution and thoroughly tested. Every principal had been given the best form of expression by the ablest men. The drafting of a constitution had therefore, almost necessarily, become a matter of selection of these fundamental principles of government that had stood the test of experience and arranging them into a harmonious whole. Nor is it reasonable cause for criticism that the convention adopted, largely, the result of the labors of others for the declaration of rights contained in prior constitutions had given such perfect expression to every principle of representative investigation in the domain of constitutional construction.

The formative period of American constitutions was the five years from 1775 to 1781. This period was not the result of an impulse but of steady growth that began before the landing of the Pilgrims. It was the result of the irresistible development of the yearning of the colonists for liberty and free self government, largely promoted by the oppression of the mother country.

The result of this growth and development was the

birth of a new nation founded upon the principles of free self-government, the rights of liberty and of conscience.

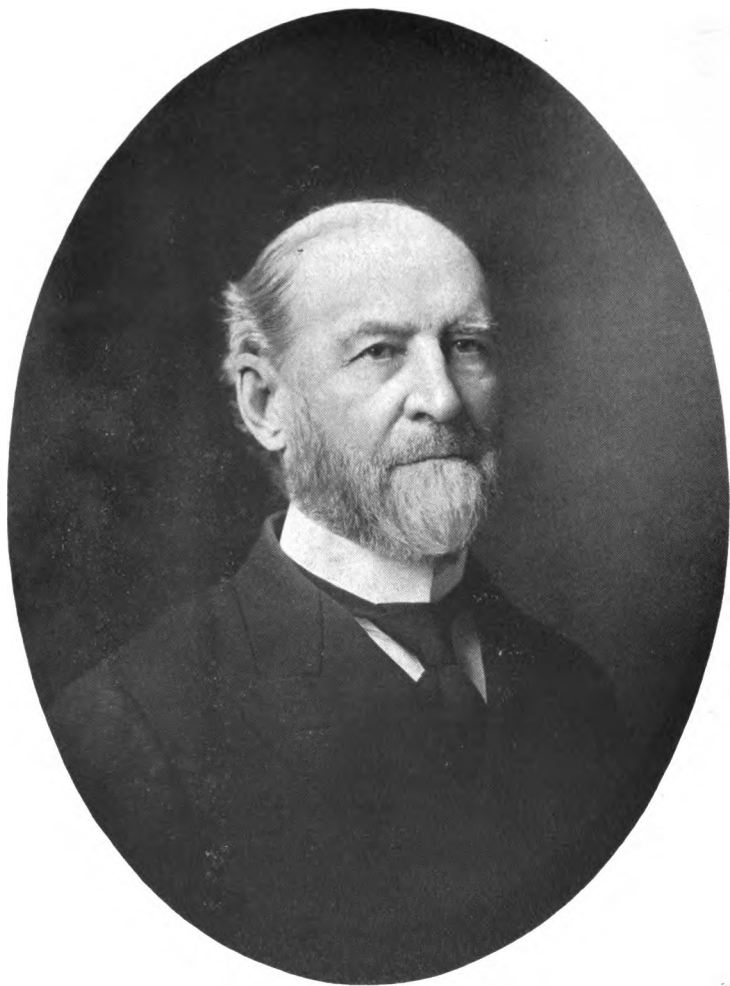
To the wise and patriotic statesmanship of the colonists are we indebted for both the form and substance of our national and state constitutions. It is much to their credit that with but limited experience and the almost entire absence of constitutional law they were able to draft and adopt forms of government that have stood the most severe tests.

It has been said that the history of the world might be written in the biographies of twelve men. It is probably true that the early history of American constitutional government might be written in the combined biographies of a dozen of the colonists. High on the roll of such men should be placed the names of Thomas Hooker and Roger Williams.









JOHN B. CASSODAY

## MATTHEW HALE CARPENTER.

BY HON. JOHN B. CASSODAY.

The reputation of a state depends largely upon the character, ability, purpose and intellectual force of its representative men. For a third of a century, Matthew Hale Carpenter was a citizen of Wisconsin and, for most of that time, a distinguished member of the Wisconsin bar. He was born at Moretown, Washington county, among the mountains of Vermont, December 22, 1824, and died at Washington, D. C., February 24, 1881. He took up his residence in Beloit in the county of Rock and state of Wisconsin about the first day of June, 1848, being a few days after the state had been admitted into the Union. He continued to reside there until October, 1858, when he moved to Milwaukee, where he continued to reside until his death. He never held any office except district attorney for Rock county from January, 1853, to January, 1857, and United States senator from March 4, 1869, to March 4, 1875, and again from March 4, 1879, to the time of his death.

The purpose of this article is to give a sketch of Mr. Carpenter as a lawyer, and not as a politician or statesman. In fact, his best friends have never claimed that he possessed the aptitude or finesse essential to become a successful politician. On the contrary, he seems to have despised mere politics. He once said in the senate in grave debate, that "politics is one of the strangest subjects that ever perplexed

the human mind. When politics comes in, reason and justice go out. We see it illustrated to-day on both sides of the water." So he had but little regard for that phase of statesmanship which depends entirely upon diplomacy. Once, in answer to Charles Sumner in the senate, he drew a contrast between a statesman, who defended his position by mere abstract, philosophic reasoning and glittering generalities, and a lawyer, who, from practice and necessity, was compelled to adhere to the facts of the case under consideration. Mr. Carpenter, or "Matt.," as he was in the habit of subscribing his name to letters and legal papers and as he was usually called among his professional brethren, was bold, clear, direct, aggressive and commanding—qualities very useful to an eminent lawyer. He was not only a brilliant advocate, but an able, learned and profound lawyer. To appreciate his character and ability as such it is necessary to trace his career from childhood to young manhood, and from young manhood to complete intellectual development, and then to the subsequent mastery of his intricate profession.

His childhood and early boyhood were limited by the environment of a country town with small opportunities for learning. His father was a fine-looking man, easy and social in manner, well posted in politics and a fluent talker, and, from time to time, held the offices of sheriff, deputy sheriff, constable, justice of the peace, postmaster, and representative in the legislature, but accumulated very little property. His mother was the daughter of a minister, and a gentle, sweet-tempered, accomplished, Christian woman, and brought up her children accordingly, but she died when he was only a little more than ten years of age. Two

traits of character were developed in him very early—one was a very decided aversion to manual labor, and the other was a strong avidity for books. His father's limited means made it necessary for him to apply himself to labor which he did not like, and to refrain from reading books, which he did like. The conflict between the father and the son on these subjects sometimes resulted in the triumph of the one and sometimes in the triumph of the other. In one respect the son had the advantage of the father—for he was the pet of his grandfather, Cephas Carpenter, who had much experience as a justice of the peace, and although not a lawyer, yet he frequently tried causes against lawyers before other country justices and was himself a great lover of books. Like most grandfathers he was particularly indulgent to his little grandson; and so would occasionally slip a sixpence, or a shilling, or a quarter, into his pocket. Matt. was never a financier in any sense, but he was shrewd enough to husband his resources so acquired; and hence when his father was absent for a time as sheriff or constable and had directed him to hoe a field of corn or potatoes during his absence, with the help of an Irishman near, for one day only, he would, for a consideration, generally succeed in getting the Irishman to complete the job without doing any work himself. Thus, early, he learned that men were generally controlled by some motive, and he never lost sight of it in the trial of causes. There was another circumstance which showed his early aptitude as a lawyer. He and a neighboring boy, living on the opposite side of the Mad River, spent most of their time playing together. Finally the fathers consulted as to the best way of getting their sons to work, and the

result was that each forbade his son to cross the river. Notwithstanding the injunction, and on a day when his father was absent, Matt. took his position early upon the middle of the bridge, and then whistled for his companion, and when he came soon convinced him that so long as they both remained on the middle of the bridge neither of them would cross the river or disobey his father. Upon another occasion he was directed to hoe a field of corn during his father's absence, and when, on his father's return, he was reprimanded for leaving weeds between the rows he shrewdly replied that he was not told to hoe the weeds but only the corn. Fortunately for Matt. his father as sheriff had made the acquaintance and secured the friendship of Paul Dillingham, a prominent lawyer of Waterbury in the same county, who subsequently became governor of Vermont and representative in congress. The result was that Dillingham occasionally called at the Carpenter home and soon became warmly attached to the precocious boy. On one occasion, when Matt. was six or seven years old, Mr. Dillingham went so far as to tell him that when he became fourteen years of age he might come and live with him and he would make a lawyer of him. Absorbed in legal controversies, the subject naturally passed from the mind of Mr. Dillingham, but with the boy it was a serious business proposition. The thought of becoming a member of Mr. Dillingham's family and a lawyer was pondered in his young heart and as he became older the thought was greatly stimulated by the limitations of his home life. The environment in which he was placed and the hope of becoming a lawyer induced him to apply himself to study with renewed vigor. His mother's early training had

given him a religious cast of mind, and this, with his reading of the bible and committing certain portions of it to memory before he was fourteen years of age, may account for his frequent references to the scriptures in his arguments and public speeches. Besides, during that time he read several of the speeches of Clay and Webster and committed some of them to memory. Among others he committed to memory the whole of Webster's reply to Hayne, and upon one occasion, to aid a benevolent enterprise, he recited the whole of it to a crowded house, notwithstanding an admission fee had been charged.

On becoming fourteen years of age and having acquired what learning he could from the school at Moretown, and with the promise of Mr. Dillingham in mind and with the consent of his father, he started for Waterbury, where he was cordially received by Mr. and Mrs. Dillingham and at once became a member of their family. For four years and a half he made his home with them and attended the more advanced and progressive graded schools of Waterbury—not missing a term and rarely missing a class. His vacations and holidays and evenings were spent in reading literature and studying the elementary principles of law in Mr. Dillingham's office; and in his absence he "ran the office so far as justice business was concerned." At the end of that period Mr. Dillingham procured his appointment to the Military Academy at West Point; and he entered that institution with a class of fifty-two others, July 1, 1843. His record while there was in every way creditable and commendable; but after being there two years, he returned "home" at Mr. Dillingham's "on sick leave." As stated by Mr. Dillingham, "partly on account of his



health and partly on account of his ambition to become a lawyer he resigned his cadetship in August, 1845." Thereupon he again entered upon the study of the law in the office of his foster-father and continued the same, proving himself to be "a most faithful and progressive student," until the November term of the court for 1847, when on the motion and recommendation of Mr. Dillingham he was admitted to the bar of the state of Vermont as an attorney at law by Chief Justice Redfield, who expressed "gratification at his legal attainments and bright prospects of professional success." Mr. Dillingham was proud of his *protege* and offered to take him in as partner, but Matt. had "previously resolved to settle in the boundless and growing west" and so declined the offer. Mr. Dillingham then said to him: "If you ever want money, a friend or a home, remember that my purse, myself and my house will be at your service."

Two or three days after he was thus admitted to the bar he started for Boston and armed with letters of introduction from Mr. Dillingham and others he traveled about that city until he discovered the modest sign of "R. CHOATE—COUNSELLOR AT LAW." The great advocate was not in his office when he first called and as Carpenter "was not dressed in the latest Boston fashion" and evaded the questions put by the clerks in the office as to what business he desired to have with Mr. Choate, it was only after repeated efforts that he was enabled to meet the great advocate personally. Upon being admitted to his presence "Mr. Choate kindly asked what he could do for him." Carpenter then "exhibited his letters of introduction, told who he was and what he wanted, and ended by saying that he had journeyed from Vermont to enter the of-

fice and study the methods of the greatest jury lawyer in Massachusetts in order to be able to follow his example and reap similar rewards." This frank and simple statement made a favorable impression upon Mr. Choate, who inquired of the clerks whether there was a place for another student in the office; and when told that there was none, he told Carpenter that he would give him a place in his private room and that he could come the next morning, and then instructed his clerks accordingly. On entering his office the next day Mr. Choate found him seated at a small desk which had been ordered for the purpose, studying some of Mr. Choate's most important printed briefs and opinions. To test his ability Choate handed him a letter from an attorney at Exeter, asking his opinion upon a question of law, and told him to answer it. After diligently studying the question with the aid of Mr. Choate's fine library, Carpenter wrote an opinion upon the question in clear and concise form, and then submitted it to Mr. Choate, who, after carefully reading it, said: "Well, Judge, I guess I can put 'R. Choate' to the end of that and tell that lawyer to send me \$100." On being signed, it was enclosed in a note written by Carpenter and sent to the Exeter attorney, who in due time sent the money. The result was that Choate generally addressed Carpenter as "The Judge;" and at times was quite intimate and confidential with him—explaining to him the importance of studying the underlying principles of the law and never leaving a case "until he had become fully satisfied and convinced upon its every phase and question" involved, and the practical methods and common wisdom in dealing with men and the secrets of controlling courts and juries. A few months afterwards Mr.

Choate's eyes became weak and temporarily useless, and so, during that time, Carpenter acted as his amanuensis and became an inmate of his "family as well as his companion in court and in almost all other places." Thus he became acquainted with Mr. Choate's method of study and the preparation of his cases and arguments and the secrets of his work and business. On motion of Mr. Choate, Carpenter was admitted to the Supreme Judicial Court of Massachusetts at its March term for 1848, with Chief Justice Shaw presiding. He thereupon announced to Mr. Choate his intention of soon starting for Wisconsin, which was about to be admitted into the Union. Choate replied; "I honor your determination, but I was selfish enough to hope you might remain with me; yet, as you have resolved upon this step you had better not recede from it. Nevertheless, you can always rely upon my friendship. Have you any money?" Carpenter replied that he had no means with which to purchase a law library. "Go, then," said Choate, "to Little, Brown and Company, select your books and refer them to me for security." Accordingly, Carpenter selected as many law books as he dared to, on Mr. Choate's guarantee of credit. He showed the list so selected to Mr. Choate, who said: "Your list is too small;" and thereupon he marked a list of books in the catalogue, which were in the aggregate of the value of \$1,000, and said to Carpenter: "With these tools you can begin something like effective work." When Carpenter was about to start for Wisconsin, Choate asked him how much money he had. He reluctantly admitted that he had only a small amount, but stated that he could get what he wanted from Mr. Dillingham. Disregarding such statement, Mr. Choate

handed him enough money to pay his expenses to Wisconsin with this written introduction:

Boston, May 25, 1848.

I have great pleasure in stating that M. H. Carpenter, Esquire, is well known to me; that his character is excellent; his talents of a very high order; his legal attainments very great for his time of life; and that his love of labor and his fondness for his profession insure his success wheresoever he may establish himself. He studied the law in my office for the closing portion of his term, and I part with him with great regret. To the profession and the public I recommend (him) as worthy of the utmost confidence, honor and patronage.

RUFUS CHOATE,

Counsellor at Law.

Four days after that was written Wisconsin was admitted into the Union, and a few days after that Carpenter, influenced by "The New England Emigrating Company" formed in Vermont and New Hampshire in 1836, reached Beloit in Rock County, where he made his home for the first ten years of his practice. At that time Carpenter was not quite twenty-three and a half years of age, but he had studied law for three years under the most favorable circumstances. The character and intelligence of the people of Beloit and of Rock county and vicinity were well calculated to be attracted by the brilliant eloquence and ability of the young lawyer from New England. The territory of Wisconsin was not organized and the public lands in the south-eastern portion thereof were not opened to the public market until 1836—a few months before Michigan was admitted into the Union. About that time the National Bank Charter expired and financial distress followed in the east and that led to the Bank-

rupt Act of 1841. Such conditions and the fact of such lands coming into the public market induced the organization of "The New England Emigrating Company" mentioned. Under the influence of that company a large portion of the land upon which the city of Beloit is now situated was entered as early as November 26, 1838. The result was that between 1836 and 1850 there was a great rush of emigration from New England, New York and other states to southeastern Wisconsin, and particularly to the counties of Rock, Walworth, Racine and Kenosha. Thus Rock County which only had 480 inhabitants in 1838, in 1840 had 1701 and in 1850 the number had increased to 20,750, whereas the whole state contained 30,945 in 1840 and 305,391 in 1850. Among such immigrants were many young men from some of the most choice and influential families in the east—including many lawyers who had studied and been admitted to the bar before coming to Wisconsin and some of whom had been in the territory for years and had become well established in business long before Carpenter made his appearance. Notwithstanding the fact that the field was well occupied in advance by able lawyers, yet Carpenter received his full share of business from the first, and no young lawyer ever entered a new field with brighter prospects of success than did the subject of this paper.

After a few months' experience as a practicing lawyer, however, such prospects were gradually displaced, first by inflammation resulting from a bad cold, which for some months greatly impaired the use of his eyes, and then, by improper treatment from local physicians, which for months completely destroyed his sight and finally threatened him with permanent

blindness. Notwithstanding his impaired eyesight, professional business continued to flow in upon him until he was advised by his physician that his only chance of escaping permanent blindness was to go without delay to the New York City Infirmary. Accordingly he started for New York about the last of March, 1849. In a few weeks the \$50 he started with were exhausted and so he found it necessary to write to Mr. Choate and explain to him his actual condition and ask for financial assistance. Mr. Choate at once answered with a sympathetic and cheerful letter, enclosing his check for a liberal sum of money, with directions to call upon him for further assistance whenever circumstances required. As directed, after a few months, Carpenter wrote to him for more funds, but as Mr. Choate was on a trip to Europe at the time the letter was unanswered for several weeks. Finally and when Carpenter was about to be sent to the public hospital a letter came from Mr. Choate, dated on shipboard, explaining the delay and enclosing a draft sufficiently large to cover his immediate wants and to supply his needs for several months thereafter. After remaining in the infirmary 16 months the physician in charge consented to his going to Vermont, on condition that he would refrain from reading or writing for at least six months. Accordingly he left New York for Mr. Dillingham's home in the summer of 1850 and remained there for several weeks, wearing dark glasses and a broad shade over his eyes to protect them from the sunlight. He began to improve rapidly and so he obtained an "accommodation acceptance" to the amount of \$500 from a friend in Boston, which he secured by a chattel mortgage on his office furniture and a portion of his library, and upon which

he drew \$250, and after an absence of 18 months he returned to Beloit on the last of September, 1850.

An intimate friend of his during the time wrote of him after his death, "that I know nothing in regard to the private life of any of my friends who have become famous, which showed such a combination of pluck, patience and endurance, coupled with trials of the most heart-rending character as were triumphantly endured by Carpenter at that time. . . . He often told me that he regarded that time of trial as one in which there was formed in him more character, more of a feeling of necessity for trust in God, of the vanity of human ambition, of the tenderness of unselfish human love, of the pricelessness of the affections and sentiment that were only strengthened and made more fervent by afflictions, separation and almost utter hopelessness."

So another who was intimate with him during the time said of him, "that he never heard Carpenter utter a word of complaint or express a regret that fortune was less generous with him than with others—never saw him despondent or wince under any suffering. On the contrary, he seemed even more cheerful and witty, and the sunshine of his soul shed more effulgence than had the light of his wondrous eyes."

It is not to be inferred from the fact that he thus returned to Beloit, that his eyes were in a condition to be used for study. On the contrary, obedience to the injunction of the physician at the New York infirmary when he left that institution, required him to refrain from any reading or writing for at least six months; and that time did not expire until about the first day of January, 1851. It is safe to say that he did not regain the use of his eyes, even in an impaired

condition, until about the time he was 26 years of age. But the period of his calamity was not without some compensation. During his affliction his mind had been enriched by listening to the reading of a considerable literature and the opinions of Chief Justice Marshall, Mr. Justice Story, Chancellor Kent and others.

Thus it appears that he re-entered upon the practice of law at the age of 26, under adverse and discouraging circumstances, and that may be regarded as the beginning of his practice. His indebtedness for his library and for his "accommodation acceptance" and to Mr. Choate were gradually maturing and there was no way of paying the same or even current expenses except from business subsequently to be performed. The village of Beloit and the town of that name—six miles square—in which it was situated—together contained at the time only 2,730 inhabitants; and were situated in the southern part of the county, adjoining the Illinois line. The village of Janesville was in the center of the county and the county seat, and that village and the town of the same name, six miles square, in which it was situated were 12 miles north of Beloit and together contained 3,419 inhabitants and most of the lawyers of the county lived in Janesville. Of course, under the circumstances mentioned, the litigation in the county naturally went to the county seat.

But Carpenter met the situation with a courage which could not be daunted and a manly enthusiasm which commanded respect and attracted business. His office was soon crowded with all the business he could do with the aid of clerks.

The cruel experience he had passed through did not



destroy or weaken his faith in the accuracy of his own convictions on questions of law. Thus upon being beaten in two cases by Chief Justice Whiton sitting at the circuit, he took them both to the old supreme court on writs of error and they were both reversed at the June term of that court for 1852. Such early double victories gave him prestige with the people, the bar and the courts.

A separate supreme court was organized in 1853, and at its first term in June, 1853, Carpenter had three cases, in two of which he was successful and one he was beaten. At the December term of the supreme court for 1853 he had four cases. In three of them he was successful and in one was beaten. During the first five years of his practice he had 14 cases in the supreme court as will appear by consulting the 3rd of Pinney and the first four volumes of Wisconsin Reports.

So many cases with such remarkable success in the highest court of the state during the first five years of his practice are some indication of the extensive business he must have had in the inferior courts of Rock county and vicinity during the time mentioned. Being restored to health and well established in business and no longer dependent upon eastern friends for assistance, he went east to claim as his bride one whom he had learned to admire while studying law with his foster-father and to love when she tenderly cared for him at her father's house while he was there during his calamity of blindness in the summer of 1850—Caroline—the accomplished daughter of Governor Dillingham. On returning to Wisconsin he was at once retained in by far the most important case with which he had been connected up to that date and one

which made him famous throughout the state and known among lawyers throughout the United States—Attorney General *ex rel. Bashford v. Barstow*, 4 Wis. 567–802. Mr. Barstow was the rightful governor of Wisconsin from the first Monday of January, 1854, to the first Monday of January, 1856. He had been elected by 5,815 majority and 9,119 plurality and the whole Democratic ticket was elected at the same time. In the summer of 1855 he was renominated as the Democratic candidate for the same office. His Republican opponent was Coles Bashford. The canvass was spirited and aggressive. After the election in November, 1855, the Returning Board, consisting of the Attorney General, Secretary of State and State Treasurer, all of whom had been elected on the same ticket, declared that Mr. Barstow had been elected by a majority of 157. Charges of fraud were boldly made. The excitement became intense. It soon became apparent that the controversy would find its way into the courts. On the day for inauguration Mr. Barstow took the requisite oath and continued to hold the office of governor under a claim of right. It was conceded that his associates on the ticket had all been elected and were rightfully in office. On the day for inauguration Coles Bashford also took the requisite oath of office and claimed to be the governor of Wisconsin. His demand for the office having been refused, he thereupon, as relator, instituted proceedings by *quo warranto* in the name of the attorney general against Barstow in the supreme court of the state to determine the right and title of the two contestants for the office. The relator was represented by Edward G. Ryan, Timothy O. Howe, James H. Knowlton and

Alexander W. Randall. Mr. Barstow appeared by Jonathon E. Arnold, Harlow S. Orton and Matthew Hale Carpenter, and they boldly moved to quash the writ and dismiss the proceedings for want of jurisdiction. The contest suggested some unique questions of law as to the dividing line between executive and judicial authority. In such a controversy the mere brilliant advocate with power to sway the multitude would be of no value. Fully comprehending this fact, each party selected for the contest lawyers of known learning in the law and of commanding legal ability. Carpenter at the time was only thirty-one years of age, while the other lawyers in the case were from seven to fourteen years older than he was. To be selected by the sitting governor of the state as one of his counsel in such a case was of itself a great honor, but to be selected by his able and learned associates under the circumstances to make the opening argument on the question of jurisdiction was a still greater honor. His opening sentence will sufficiently indicate the bold and aggressive tone of his argument: "We come here to argue a question of vital importance; we come to resist an attempt to maim the proportions and mar the harmony of our state government by striking down one of its independent departments; we come to resist the endeavor now made to subject the executive to the control of this court." He was answered by Randall, Knowlton and Howe and supported by Orton and Arnold. The court overruled the objection to the jurisdiction and proceeded to consider the merits of the answer, and upon that Mr. Ryan, who was fourteen years older than Mr. Carpenter, made a great argument, and judgment was finally entered ousting Barstow and installing Bashford.

From that time forward, Carpenter was justly regarded as one of the foremost lawyers in the state, notwithstanding his age and limited experience and the fact that he resided in a country village. Such was the opinion of the early bar—fully verified by the records of the courts. About August, 1858, Carpenter received a general retainer against a railway company at an annual salary of \$6,000 a year, and in October, 1858, he moved to Milwaukee with his splendid library, and for a short time became a member of the firm of Ryan, Carpenter & Jenkins; but that firm soon dissolved and as early as July, 1859, Ryan and Carpenter found themselves opposed to each other in the celebrated trial of Sherman M. Booth for criminal intimacy with Caroline N. Cook. Ryan aided the district attorney and Carpenter aided the Hon. Henry L. Palmer—now at the head of the Northwestern Life Insurance Company, in the defense. The trial lasted two weeks and the newspapers and the public became involved in the controversy on the theory that the case had some political bearing. The masterly eloquence of both Ryan and Carpenter greatly intensified the feelings of the bystanders and the public generally. It is said that the noted Thomas Marshall, of Kentucky, who was at the time lecturing in the north on Henry Clay, heard the arguments of both Ryan and Carpenter and then declared that he had never heard them surpassed by Clay or Webster or any other orator. The jury disagreed and subsequently the prosecution was abandoned. Soon after, Carpenter successfully defended Governor Salomon, of Wisconsin, who, after having quelled a riot in resisting the draft in one of the counties of the state and arrested

and imprisoned the rioters during the civil war, was sued for false imprisonment.

In obedience to the precept of Mr. Choate, Carpenter was in the habit, as far as possible, of mastering the facts and the law of every case before going into the trial; and then trying the same in pursuance of a preconceived plan. His examinations and cross-examinations of witnesses were generally short and direct and to the point. The result was that his rapidity of procedure and his bold and aggressive manner frequently confused and sometimes confounded his opponent.

In the trial of a cause before a jury he was quite likely to do the unexpected. Very soon after the close of the war he was retained to defend a captain, whose company had just been mustered out of service, for shooting and killing a former member of his company by the name of Jack Shay. They had become very bitter toward each other while in the army. The killing was undisputed; but the circumstances under which the shot was fired were in dispute. The evidence was close. Mr. Carpenter opened his argument to the jury with this startling statement: "Gentlemen of the jury: Whatever may be the result of this trial I congratulate you upon the fact that Jack Shay is dead." The jury disagreed. Upon a retrial the district attorney, who from the first had been assisted by an able lawyer, made a dull and weak argument to the jury, whereupon Carpenter at once submitted the case to the jury without argument, to the consternation of the district attorney's able assistant. The jury again disagreed and thereupon the prosecution was abandoned.

Once while trying a case before a jury, and after

the court had ruled in a certain line of testimony against his repeated objections, the presiding judge put to the witness a leading and very suggestive question, whereupon Carpenter again objected and said: "Your honor, I am bound to treat with respect every ruling of this court—however objectionable I may deem it to be, but I must insist that this testimony be, at least, filtered through the witness." The judge saw the force of the objection and at once ruled out his own question.

As Carpenter's field of labor widened, the importance of the litigation in which he was from time to time engaged increased and extended into the federal courts and from thence into the supreme court of the United States. Thus, it appears from the records that, as early as 1863, he argued two cases which were reported in the 1st of Wallace. He also had six cases reported in the 2nd of Wallace, four cases in the 3rd of Wallace, two cases in the 4th of Wallace, one case in the 5th of Wallace, and seven cases in the 7th of Wallace—all of which were argued within the short period of five years and before he was elected to the United States senate.

Some of these cases were of great public interest and importance. In *ex parte Garland*, 4 Wallace, 333, the question arose whether a lawyer who had been admitted to practice as an attorney at law in the supreme court of the United States before the war, and had participated in the rebellion as a high official in the confederacy, and then, after the war had terminated, had been pardoned by the president of the United States, could practice law in that court without first taking the test oath prescribed by the act of congress of July 2, 1862, and the supplementary act

of January 24, 1865, extending the provisions of the original act so as to embrace attorneys and counsellors of the courts of the United States.

Mr. Garland was a very prominent lawyer in the state of Arkansas, and his right to practice as such attorney without taking such oath could only be granted in case such acts of congress were unconstitutional. Mr. Garland's case was made the test for the entire southern bar, who engaged Carpenter to appear as counsel in the case to aid that able lawyer, Reverdy Johnson, of Baltimore, who had volunteered to support Mr. Garland's application. Their efforts were successful although by a divided court.

That case was decided at the December term for 1866. A case of far greater public importance is a case which was argued upon the merits but never reported for reasons which will now be stated. It appears that one William H. McCardle had been arrested and was held in the custody of the Major General of the United States army for trial by a military commission, under the alleged authority of the reconstruction acts of Congress. November 12, 1867, McCardle obtained a writ of *habeas corpus* from the United States circuit court for the district of Mississippi. On the hearing of the writ he was remanded, November 25, 1867. Thereupon McCardle appealed to the Supreme Court of the United States and was admitted to bail pending the appeal. Mr. Trumbull, an eminent lawyer of Illinois and chairman of the Judiciary Committee of the United States Senate at the time (with Mr. Hughes) moved to dismiss the appeal for want of jurisdiction. The distinguished Jeremiah S. Black of Pennsylvania and Mr. Sharky of Mississippi opposed the motion on the ground that the right to

appeal had been expressly given by the act of Congress of February 5, 1867, and upon that ground the motion was denied by the unanimous opinion of the court written by Chief Justice Chase, at the December term of the court for 1867. *Ex parte McCardle*, 6 Wallace, 318.

Secretary of War Stanton—with the advice and consent of the Lieutenant General of the armies—U. S. Grant—employed Mr. Carpenter to aid Mr. Trumbull in arguing the case on the merits.

In preparing his argument, which consisted of 100 printed pages, Mr. Carpenter occupied Stanton's room. In opening his argument, he said: "This is the first time in the history of the world that a bench of judges has been invoked to redress the wrongs, real or imaginary, of eleven millions of people, and to establish the authority of ten pretending governments. Such controversies have been decided by force, not by reason; in the field, not in the courts. Waterloo determined the fate of Napoleon, and he went in sullen silence to his ocean rock, never dreaming of the *habeas corpus*. No lawyer can argue, no judge decide this cause without a painful sense of responsibility. Its consequences will be upon us and upon our children; and generations yet unborn will rejoice or mourn over the principles to be here established."

Then after characterizing in gentle irony, Judge Black's laudation of the court and disparagement of military tribunals acting under reconstruction laws, he said, among other things, that: "when Congress determines any political matter, never so erroneously in the opinion of this court or the President, its action is final and conclusive. It is far better that individual instances of injustice committed by either department



should go unredressed than that the liberties of all should be swallowed up. The rule is general that a discretion committed to one authority is not to be reviewed by another. No principle has been more repeatedly and emphatically declared by this court. . . . Unpleasant as it may be to review the history of the last six years, or dwell upon the wickedness of this rebellion, in no other way can we properly consider, or correctly determine, upon the existing state of things. Counsel have done well for their clients by ignoring secession, rebellion and war. They have argued this case as though Mississippi were as innocent as Massachusetts, and had been as faithful to her constitutional duty; and when compelled, now and then, to allude to the fact that war has existed, they have changed the subject as soon as possible, and besought this court to relieve those they represent from the just consequences of their folly and crime. They admit that, during the war, the United States could overthrow and demolish the rebel governments; but they insist that the surrender of Lee and Johnston entitled those governments, or any which the people of those states might establish, to full communion as states of the Union. . . . All admit that the government which existed *de facto* in Mississippi the day before the surrender of Lee and Johnston was subject to the absolute will of the nation. We might have crushed it beneath the iron heel of war. But it is preposterous for counsel to say that by conquering the rebel armies, the only power which could sustain that government, and by effecting complete conquest of the south—its territory, its people, and its rebel governments—Congress lost the right even to make a respectful request in regard to the results of our victory;

and that the consequences of this fearful rebellion, which for four years shook the continent, are to be 'trammelled up' by the rules of special pleading, upon a bill in equity."

At the close of the arguments the court took the case under advisement and on March 27, 1868, and before it was decided, Congress repealed the act of February 5, 1867, which had given the right to appeal. Eleven days afterward, Stanton wrote to Carpenter, among other things, that: "In taking leave of you, I can not forbear expressing my very great satisfaction with the able and successful services you have rendered the government in the important cases committed to your charge in the Supreme Court of the United States." At the December term of the court for 1868 Mr. Trumbull and Carpenter argued that such repealing act should not be construed as having any effect upon the appeal pending before it was enacted, but the court dismissed the appeal for want of jurisdiction. *Ex parte McCardle*, 7 Wallace, 506.

Thus it appears that before Mr. Carpenter was elected to the United States Senate and when he was only 44 years of age, he had argued 22 cases in the Supreme Court of the United States and among them several of national importance. Of course, most of those cases and very many others had been tried by Mr. Carpenter in the lower courts.

While Mr. Carpenter was necessarily intense and persistent in his professional labors, yet he seems to have had time to express himself as a citizen on most public questions.

When that great leader of the Democratic party in the United States Senate—Stephen A. Douglas—broke from the administration of President Buchanan in the

winter of 1858, Carpenter and other leading Democrats of Wisconsin boldly took the side of Douglas and in a public meeting at Janesville, called for the purpose, so declared in numerous speeches and resolutions.

When Douglas visited Wisconsin in the presidential canvass of 1860, Carpenter accompanied him and made numerous speeches in his behalf.

In a speech at Watertown on the night before the election, he expressed himself as being full of apprehension of a coming civil war; and boldly declared: "Such a war can only be averted by the election of Judge Douglas, and I think all patriots irrespective of party, should turn in with their mighty forces to place him in the President's chair, and thus bridge over the terrible crisis that is pending." After paying a generous tribute to Douglas, who was a native of the same state with himself, he predicted that, if Lincoln should be elected, the recruiting drum would be heard in less than a year, and in that event he declared that if the first blow should come from the south—if she raised her "hand in violence against the government, the flag and the Union" he would "if possible, be the first man in the field in their defense," and he hoped that every one of his audience would be "ready to fight to the last for the banner and the chart of 1776—for 'none can die too soon who die for their country.'"

True to his prediction Lincoln was elected, Fort Sumter was fired upon by the South, and the recruiting drum was heard as early as in April, 1861. Public meetings were held throughout the North, and in the first one held in Milwaukee, Mr. Carpenter, among other things, said:

"Nearly 40 years of profound public tranquillity have passed over and blessed our land. We have forgotten to use the weapons of war and have cultivated the arts of peace. We have engrossed our thoughts and enlisted our hearts in the pursuits of agriculture, manufactures and commerce, and in advancing the arts and sciences most useful to man. No nation has been so blessed—none has so prospered. . . . But now, when we were least looking for it, our trial has come. Prosperity has debauched our people and corrupted our government. We have grown rich, have waxed fat; and as a nation have become proud and wicked. . . . With everything to fill the hearts of the American people with thanks to God and love toward each other, God has been forgotten and brother is in arms against brother. The union of these states, to accomplish which our fathers sacrificed so much, and which has been rendered sacred, as the nation thought, by the efforts of statesmen of all grades of intellect and every shade of political sentiment to preserve and protect, the Union is menaced with sacrilegious violence; and armies are marching on American soil to destroy our country; and our country's flag has been displaced on the battlements of a national fortress for the treasonable banner that flouts the southern breeze. To quiet this unholy rebellion, to avenge this unendurable insult to our national flag, our people are rising as one man; and every man feels insulted by this insult to his country. Secession is not a remedy for evils, but is the sum of all evils; it is a heresy that must be drowned in blood; it can not be reasoned down; and much as we all do and must regret it, there is but one of two things left us—we must crush it or it will crush us."

A few months afterwards, in reply to the criticism of a personal and democratic friend, he wrote: "The first principle of democracy has been, and is, devotion to our whole country and fidelity to the constitution of the United States in every particular. Compared with this all other things are to be held as naught; and even the organization of the Democratic party—a party that has shown itself capable of administering the general government, because it has ever sympathized with the principles on which it is founded—should be cheerfully abandoned for the present, if that be necessary, to preserve intact the government our fathers constructed for us. . . . We must say of whoever is for upholding the constitution and preserving this union of states against open and secret enemies, he is my brother. We must look this war honestly in the face. We cannot protect ourselves and save our country with cunning tricks, nor suppress this insurrection with a falsehood. We must strike home to the rebels; hit them on their tenderest spot."

Such utterances from Mr. Carpenter and many others of a similar import put him out of harmony with many of the leaders of his party, who met in August, 1862, and severely criticised the manner of conducting the war and issued what was known as the "Ryan Address." Mr. Carpenter at once wrote a review of that address, which was published throughout the entire North. That review called forth a letter of thanks from Secretary Stanton.

A few days after Mr. Lincoln issued his Proclamation of Emancipation in September, 1862, and at a mass meeting held in Chicago to ratify the same, Mr. Carpenter, among other things, said:

"We need not necessarily discuss the propriety of,

or necessity for, the President's proclamation. Upon that subject there is understood to have been difference of opinion in the cabinet, hesitation on the part of the President; and very likely we should find difference of opinion among the speakers and hearers to-night. But that is not the question. Wise or unwise, necessary or unnecessary, it has gone forth, and the only question now to be considered is, shall the government be sustained in enforcing it? The ship of state is tossed by angry waves; our liberties, our national existence even, hang on the results of military operations, and the commander must take the responsibility of directing what shall and what shall not be done. He may not always do the wisest thing, but we have no hope but in executing, unitedly and without disputation, such plans as the President may devise. . . . The necessities of military success require subordination to one guiding mind, and any policy, even the worst, is preferable to no policy. We have drifted long enough, and our captain at length indicates a port and orders us to make for it. It may not be the best that could have been selected; there may be shoals in our course, and breakers ahead, but it is certain that we must unite in our efforts to reach it, or go down in the engulfing flood. For one, I propose to go ashore; and afterward, when delivered from the tempest, we shall have long winter nights and soft summer days to discuss political questions and court-martial the captain, if he deserves it. I would support the measure, even though I thought it unwise, so long as it remains the military policy of the country. But I do not believe it unwise. . . . The rights of property and all other rights must give way, if necessary, before the war power; and this

proclamation merely announces the future war policy of the government. First, there is not the slightest doubt that it is the duty of the President to conduct the war to a successful end; if it be necessary to desolate the south, then let the South be desolated—the necessity is our justification. Second, the only remaining question is the necessity of the particular measure, and of that the President is for the present the sole judge. He says it is necessary. I believe it is. The slave is merely property to his master, and our northern objectors say, rather than weaken the South by depriving the rebels of their property, let us waste another million of true, loyal men, and a thousand millions in treasure.”

In other meetings, and especially one at Janesville, Mr. Carpenter, after careful study and preparation, and in a very able and masterly address, analyzed as a lawyer the constitutional powers of Congress to raise and support armies and navies, and the constitutional powers and duties of the President of the United States, as the commander-in-chief of the armies and navies, to put down the rebellion. No address upon constitutional questions ever made a more profound impression upon a popular assembly. Such addresses were repeated in different parts of this and other states.

He was a promoter and active participant in the loyal Democratic convention, held at Janesville, September 17, 1863, and attended by leading Democrats from different parts of the state.

In obedience to his own logic—often repeated—he declined to support McClellan and Pendelton in 1864, on the ground that they were pledged to a platform that “Jeff. Davis would have written;” and declared,

that "Lincoln has honestly been endeavoring to put down the rebellion and should receive the hearty support of all men. If we believe the rebels right, then is the war wrong. If the government was right in going into war, then is it right now. The people are pledged to the support of this government, not to the 4th of March next, but for ten generations — for all time."

September 29, 1865, a banquet was given at Janesville in honor of General William T. Sherman, who was an honored guest at the state fair. The nominees of both political parties in this state were present. Also United States Senators Doolittle and Howe and Postmaster General Randall. Upon only a few hours notice Carpenter spoke to the sentiment—"The Loyal American People—always faithful to the Union." His response consisted largely of a series of questions which would admit of only a single answer; and that in condemnation of the course then being pursued in the South by the administration of President Johnson at Washington. Almost every sentence was received with vociferous cheers. Sherman said to Carpenter the next day that he had never before thought of the matter in the light he had thus presented it.

In the conflict between Congress and the President, Doolittle and Randall supported the latter, and Howe was identified with the former.

In September, 1866, Carpenter, at the request of personal friends, challenged Doolittle to a joint debate of the questions thus at issue, but he declined. A few weeks afterwards, in compliance with a request signed by hundreds of citizens, Carpenter expressed his views upon the questions suggested, to a large and brilliant audience in Milwaukee, as to the principles on which



the reconstruction acts were based. From the time Fort Sumter was fired upon down to the autumn of 1867 Carpenter had refrained from discussing partisan politics or attending partisan conventions or meetings. On the contrary, in all his speeches and letters he had steadily adhered to what he regarded the paramount issue between unionists and disunionists—or as he sometimes put it, between patriots and traitors.

He was chosen and sent to be a delegate to the union Republican state convention, which renominated Governor Fairchild, September 4, 1867, and from that time on he became an avowed Republican.

Up to the time he was 44 years of age he had never held any office except district attorney of Rock county. His ready and sparkling wit, his agreeable manners, his good-natured and jolly exuberance, his brilliant and captivating oratory and his convincing logic made it difficult for him to resist being elected to office or at least being nominated as a candidate for office.

But he had a supreme ambition to become a great lawyer and hence all other personal matters pertaining to office were to him subordinate.

Thus it appears that he declined a nomination for congress as early as June, 1856. He declined a renomination for district attorney in October, 1856. He declined a nomination for state senator in October, 1857. He declined a nomination to be an independent union candidate for congress in September, 1862. He declined a nomination for congress in September, 1864. Upon numerous other occasions he was urged to become a candidate for office, but at each time he dismissed the matter with a remark which precluded further advances.

After he became 44 years of age a new temptation was presented. At the election in November, 1868, Grant had carried Wisconsin by a majority of 24,117; and both branches of the state legislature were Republican. It was certain that a new man would be elected to the United States senate in place of James R. Doolittle, who had then held the office for nearly twelve years. The larger per cent. of the party—especially among the younger members—were enthusiastically in favor of Carpenter, whom they had learned to admire for his great ability and brilliancy, and to whom they felt indebted for his great services to the union cause during the rebellion and the dark days of reconstruction, which had not yet been fully completed. With Carpenter it was a serious question whether in his circumstances he ought to allow his extensive and established law business to be even partially frustrated by the duties of such an office. But having in mind the examples of Webster—who was his highest ideal of a constitutional lawyer, and his old tutor, Rufus Choate, whom he justly regarded with filial affection, he consented to be a candidate.

But some of the older members of the party had plans of their own and did not take kindly to the election to that office of one whom they regarded as an intruder. The result was that upon the opening of the legislature in January, 1869, there were four other candidates in the field. But it was only necessary that all the candidates should be seen and heard at a meeting called by the Republican members of the legislature for that purpose, in order to determine their choice.

The election of Carpenter soon followed and on the 4th of March, 1869, he took his seat in the senate of

the United States. His fame as a lawyer had gone before him, and he needed no introduction to that body. Soon after, he was placed upon three of the most important standing committees of the senate—judiciary, patents, and revision of the laws of the United States—having for his associates such men as Trumbull, Thurman, Sumner, Conkling, Bayard, Ferry and Edmunds. Mr. Trumbull was his old associate in the McCardle case and against Mr. Edmunds he used to try cases in justice's court when they were both studying law in Vermont.

This paper is confined to Mr. Carpenter's career as a lawyer, and there is no purpose here of reviewing his conduct as a politician or statesman or senator. It may be said, however, that during his services in the senate he argued many legal questions in that body—especially those having a constitutional bearing, and always as a lawyer. Among such questions may be mentioned the tenure of office act and the power of removal; the payment for property destroyed in the rebellion; the conditional readmission of Georgia; the relief of Fitz John Porter, and many other legal questions. The act of March 3, 1875, "to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from state courts and for other purposes," was written by him and known as "The Carpenter Act."

That his heart was in his profession is manifest from the fact that at midnight on the last day of his first term a package of photographs was placed in his hands with the request for his autograph. Thereupon he wrote on each, "Matt. H. Carpenter, Attorney at Law."

Once while in the cloak room of the senate, reading

the printed record in a case pending in court, a number of other senators were present discussing religion and the differences in the beliefs of churches. Finally one of them asked Carpenter to what church he belonged. He answered: "None;" but continued his reading. Soon after another senator asked him what church he would join if he were going to join any. He promptly answered: "The Catholic church"—but continued his reading. Thereupon he was asked why he preferred the Catholic church to any other. He promptly replied, that that church believed in purgatory, and that, as he understood, was equivalent to a chance for a new trial. His distinguished widow writes: "I am so glad that Mr. Carpenter is to be presented as a lawyer, for his heart was in his profession."

It is not within the province of this paper to account for or even mention the political causes and action which defeated his re-election to the United States senate in the winter of 1875. It may be said, however, as a matter of history, that 60 of the 81 Republican members of the legislature warmly supported him and that he was unanimously nominated by the Republican caucus; but that 16 Republicans refused to attend the caucus and joined with the 52 Democrats in defeating him and electing his successor. One of the excuses for such action was the fact that he had supported and voted for the bill increasing the compensation of members of congress; and had boldly defended the act in a speech which was published throughout the country. Besides, he had incurred the enmity of some of the railroads. On returning home from his defeat, he received numerous ovations along the way; and after reaching Milwaukee he addressed an immense audience on the subject. The temper of

his speech is well indicated by a few of the opening sentences: "We have met—not to sorrow and mourn—not to mingle our tears over defeat—nor yet to console disappointed candidates. . . . Let the dead past bury its dead. We live in the present. We live for the future. What is done is done. Let by-gones be by-gones—move on the column." Senators Chandler of Michigan, Ramsey of Minnesota and others, met with similar fates by similar methods and for similar causes during the same winter.

Carpenter again became a candidate for the United States senate in the winter of 1879—more for the purpose of being vindicated than from a desire to re-enter the senate. Two other candidates were in the field. After 95 ballots in the Republican caucus, Hon. E. W. Keyes, who had been the leading candidate, requested his supporters to withdraw his name and move the nomination of Carpenter by acclamation, which was done. Thereupon the name of the other candidate, Timothy O. Howe, the sitting member, was withdrawn; and Carpenter became the unanimous nominee of the party. He was then elected by a large majority over the combined vote of his two Democratic opponents, the leading one of whom was his old partner—Chief Justice Edward G. Ryan.

No one complains that he did not faithfully attend to all his duties as a senator. Nevertheless, during his first term in the senate he argued 31 cases in the supreme court of the United States, as will be found by an examination of the reports of Wallace from volumes 9 to 21, inclusive. Some of these cases were of great public importance, as, for instance, the Slaughter House cases, which arose in New Orleans and were finally made to turn on the construction and:

effect of the 14th Amendment. 10 Wallace, 273; 16 Wallace, 36.

During the remaining six years of his life he argued 39 cases in the supreme court of the United States, and they are reported in volumes 91 to 102, inclusive, of the United States supreme court reports—making a grand total of 92 cases, comprised in 36 volumes of the reports, which he argued in that court during the short period of 17 years.

During the four years between his two terms as senator he successfully defended President Grant's Secretary of War—William W. Belknap—on his being impeached before the American senate in 1876 for "high crimes and misdemeanors." During that trial there was a certain ruling against him. Subsequently he sought to have it changed; and for that purpose boldly urged upon what he claimed to be Scripture authority, that Moses, on reargument, induced the Almighty to reconsider and reverse His former judgment.

So he had the honor of being selected by Hon. Samuel J. Tilden and his party friends to appear as their counsel before the electoral commission so far as the election in Louisiana was concerned.

To the mind of a lawyer what has been said naturally suggests an immense amount of hard work and study not mentioned even in a general way—much less in detail. His last speech in the senate was made January 7, 1881. His last days were mostly spent at home—working on various matters in court and the senate in which he was interested—with his law books brought to him.

Possessed of a grand physique—giving promise of a long and useful life—yet he could not resist the mal-

ignant disease with which he was afflicted and so he passed away at the early age of 56. Even while passing he continued to the end the same witty and joyous Matt. It is said that just before he died he inquired of the attending physician the cause of the severe pain he was suffering. On being told that it was the stoppage of the colon he at once remarked: "Doctor, that is not a full stop is it?"

Tributes to his character and memory as a senator, statesman and friend may be found in the records of congress. A committee of both houses of congress accompanied the remains to Milwaukee and, in a short address by Hon. Roscoe Conkling, delivered the same "to the great commonwealth he served so faithfully and loved so well"—in the presence of state officials, members of the legislature and friends.

Of course, Mr. Carpenter had faults, as well as other mortals. But no one has ever intimated that he was wanting in professional integrity or honor. On the contrary, these qualities are conceded by all.

What shall be said of him and his life work as a lawyer? Upon such a question the testimony of witnesses who were impartial and who were competent from experience and having seen and heard Carpenter in the trial and argument of causes is the most convincing.

On his first appearance before the supreme court of the United States Mr. Justice Greer—who had long been a member of that court—inquired of Justice Miller: "Who is that Mr. Carpenter who has come down from your circuit? I want to know him, for I have heard nothing equal to his effort to-day since Mr. Webster was before us."

Chief Justice Chase said of one of his early efforts:

"We regard that boy as one of the very ablest jurists in the country. I am not the only justice on this bench who delights in his eloquence and in his reasoning."

Mr. Justice Miller said when he first saw him in Milwaukee, "he was the peer of any man at the bar and the superior of most of them—even then—although he was quite a young man."

When Belknap asked Justice Miller whom he should engage as counsel on his impeachment trial he replied: "Matt. Carpenter and Judge Black—the best lawyers in America."

After Carpenter's death Justice Miller wrote: "He was a great lawyer. He was thoroughly versed in the learning of his profession, with a mind eminently adapted to seize and elucidate its principles."

Mr. Justice Field once wrote that Carpenter "was one of the most remarkable men who ever appeared before the supreme court of the United States."

After his death Mr. Justice Bradley wrote: "I esteemed him one of the best advocates I ever knew. He was extremely happy in possessing the court at once with the pith and gist of his case, no matter how occult or complicated it might be. Although to always do this must have cost him an immense amount of labor and exact investigation, his address did not betray them except in the result, his manner and style having all the outward appearance of being perfectly off-hand and spontaneous. He was indeed a thoroughbred lawyer, and must have devoted himself in the early part of his studies very closely and laboriously to the great classics of the law. It was a real pleasure to see him in any case; and whatever else came, we always knew we should have at least one



strong beam of light poured upon the pending case before it was closed."

At the bar meeting in Washington on his death Mr. Justice Davis, before whom Carpenter had tried many cases at the circuit as well as in the supreme court, said: "Carpenter was neither a statesman nor a politician. He was pre-eminently a lawyer, who may be said at a single bound to have leaped into the front rank of the profession which he loved and which he honored. . . . He had one of the best and clearest minds ever known in this country."

Edmunds said: "His arguments both in the senate and in the courts were unsurpassed, for learning, logic and eloquence."

Thurman said: "Carpenter was a great lawyer."

Roscoe Conklin said he was the "ablest constitutional lawyer in the United States."

Carpenter once said to a friend, that the highest compliment he ever had, came from a justice of the supreme court of the United States, who said: "Mr. Carpenter may be on the wrong side, and his argument may be unsound, but we always know that the point he argues is the point upon which the decision of the case must turn."

Jeremiah S. Black, who moved his admission to the bar of the supreme court of the United States, and was his opponent in the McCardle case and other cases, and finally the executor of his will, said of him: "His notions of professional ethics were pure and high-toned. He never acted upon motives of lucre or malice. He would take what might be called a bad case, because he thought that every man should have a fair trial; but he would use no falsehood to gain it; he was true to the court as well as to the

client. He was the least mercenary of all lawyers; a large proportion of his business was done for nothing. . . . To what height his career might have reached if he had lived and kept his health another score of years can now be only a speculative question. . . . As it was he distanced his contemporaries and became the peer of the greatest among those who had started long before him." The bar of Wisconsin was equally emphatic in praise of Mr. Carpenter as a lawyer and the same was sanctioned by Wisconsin's highest court.

To become eminent at the English bar where the common law as modified by the acts of Parliament is the chief concern is comparatively easy, as demonstrated by Mr. Benjamin of Louisiana after the close of the civil war.

But in a dual system of government like ours—with its divisions of power, its grants of power—its limitations of power—its prohibitions of power and its reservations of power, for one to become an eminent constitutional jurist is an achievement which but few have attained. Certainly there can be no higher praise of a lawyer than to be regarded by the American bar as one of the few. Matthew Hale Carpenter achieved that distinction.







J. HAMILTON LEWIS

## LAW AND GOVERNMENT

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HON. J. HAMILTON LEWIS

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After your invitation was accepted I had concluded upon a subject—legal of nature, questionable of propriety—it was to speak upon the repeal of state constitutions in the construction of the federal constitution by the supreme court of the United States. I had formulated an argument of respectable dimensions, fortified by cases and conclusions deduced therefrom, when that same supreme court of the United States with something of an indifferent regard to my invincible position and opposed to my irrefutable logic decided to the contrary to the both of them—in the late case of the Government vs. South Carolina. This opinion as you all recall was by five to four, I standing with the four we announce five to five while I am indignantly resenting the fixed organization of government which recognized the five of the court law—and my five law *lawless*. Thus you see I inveigh for deep dark revenge against the “lawlessness of the law.”

But truly my brothers I abandoned my paper—for reasons rising lately to the public view. I concluded to treat you gathering as in the spirit of its purpose and aid you in the divorcement of themes of the uncertain science of the lettered law—and address you as my *fellow citizens*—as well as brother lawyers. There are times when we weary of what Tennyson has termed that

Lawless body of laws—  
That codeless myriad of precedent.

I advance to the thought of Montesquieu, saying—quoting the ancient Greek—'tis the spirit of obedience to things which *are* that is the life of law, and law, as the preceptor of your preceptors hath declared, the government of things, the regulation of being. Chitty on the practice of the law, says: 'tis a science which in its theory involves the cardinal virtues of the soul, and in its practices the noblest faculties of the heart.

Therefore I speak to law, and government, I invoke the universal law. The flower which lifts its empurpled face from out some cranny of the earth is governed by the law which directs the height it shall attain, the breadth of its reaching. Were this decree of directions violated even the tittle the flower must droop and die as a penalty for the disobedience. The audacious oak, monarch of the woods, is "cribbed, cabined and confined" in the casement of the air, and its rounded sides destined to their swelling circle and the extended branches reaching out as a coverlet of earth prescribed to the hair-breadth of accuracy by a natural law, which were any intercepting power to contravene the order of this destiny, that massive oak, shuddering at its conscious fate, must yield its royal gown of green and gold to bare limbs naked of raiment and languish and decay, the prey now of the woodman's ax, the inevitable penalty of a violated law.

We have the universality of the theme exquisitely comprehended by Hooker, is it not in the Ecclesiastical Polity? Saying:

"Of law there can be no less said than that her seat is in the bosom of God; her voice the harmony of the world, the least as feeling her care, the greatest not exempt from her power; both angels and men alike

acknowledge her the mistress of all their *peace* and *joys*."

Is it true that men acknowledge her the mistress of peace and joy, or that the greatest is not exempt from her power, and the least feels her care, the care which is the chastisement of those that chastise them that they loveth?

My attention has been attracted of late to a few illustrations which indicate the purpose of my theme, which is to point to my fellow directors of the state that national peril put upon us on the one side by the anarchy of arrogance, on the other by the insolence of ignorance.

I dare paraphrase the Vision of Tirza, as given us by Addison; Behold, on one ridge seems to stand the banded army of the financial philistines panoplied in the armor of arrogance, they defy the laws, claim exemption from the process of the courts. Insolently assert their superiority to their fellow mankind and announce their self endowed immunity from the penalty of statutes or the just judgments of society. They frown upon every attempt to limit their asserted privileges. They denounce as anarchy the effort to extend the enforcement of the rule of governmental or personal honesty over them. *In this supercilious assumption they claim kingship over men and sovereignty over state.*

On the opposite elevation are massed the undisciplined army of the humble, oftentimes bigoted in prejudice and insolent in ignorance. They know nothing of the theory of government of the necessity of law and its enforcement to society. They believe that all rules of restraint are constructed for the constraint only of those who are powerless to avoid their obed-



ience or unable to escape the punishment of the violation. Often under the vicious leadership of designing captians they are taught to believe that law is an engine of oppression and any punishment the decree of tyranny. They find any course involving the destruction of their fellow man's rights justified by the ends to be attained, assault, brigandage and murder is the frequent resort. These, wherever they are, openly justify their malfeasances by pointing to open defiance of law on the part of the arrogant powerful. They ever refer to the disobedience of all rules of good conduct by those whose elevation has seemed to exempt them from the obligations of society. By the warrant of the glaring misdeeds of the influential the lesser ones commit their offenses; and by the example of those in authority, in defying the commands of the legislature, and ignoring the rights of the state, these others claim privilege to emulate, and by the license taken by the first the second take liberty to assume the role of injured citizenship. They retaliate by violation in kind, and extend to any extreme where the uses of personal profit may suggest on the one hand; or animal revenges dictate on the other. These two armies glare in hatred at each other. They advance in mutual distrust, and challenge for combat in the hope of exterminating their foe. In the broad expanse between stand you and those you represent, trembling in the anticipation of the havoc to be wrought society at large; and the death to the institutions of liberty and peace. You are conscious as you must be that you are to be destroyed in the shock, and the habitations of your sacred inheritances to go down in the flames of these wrath lighted fires. The contemplation frightens us, as the spectacle of

the array strikes alarm to the government at large. We pause to consider the dire event and avert the catastrophe.

Let me refer to that remarkable letter which John Bright wrote to Motley, following the civil war. He said:

“Mr. Motley, I note your pride and the delight that you profess in pointing to the fact that the results of your civil war have leveled all men to equality. You will have neither Prince nor Lord in your land, say you. I hope so. I for one wish for America all that she has dreamed; and I know what it means to sacrifice blood to obtain a principle. But, Mr. Motley, I would a word with you as an old friend; and before your acknowledgment of this letter reaches me, I may have passed away, perchance. I am an old man. This is the last of the few letters I have written with my hand. This much I make free to say. There will arise in your country no princes and lords who are turreted with crowns or armed with scepters; but there will be on the one hand those who will, in the arrogance of new-made wealth, born of the vicissitudes of war, of the oppression of the people, forget their allegiance to government or state, and assert a sovereignty that a king would not dare sometimes in England. On the other, there will come the king of the mob, who, remembering the hour when Wellington was stoned, will seek to compel and wring from the state that which was not a right. Or oftentimes the fires of insurrection and incendiarism will threaten the destruction of the very institution which you have now created out of the throes of war, and then will come the hour of desolation and uncertainty

which you do not now anticipate, but which I warn you has ever been the course of men."

Surely we can make the inquiry, how far has this prophecy, more sad than glorious, been fulfilled.

One or a few illustrations of lately recurring events will serve as objects of the moral I would draw.

Who of us lawyers will not recall the course of the Northern Securities case. The common law denouncing monopoly had been so contemptuously ignored that there arose magicians of world combinations and beholding the commercial necessities of exchange between the people of the Atlantic and Pacific coasts, beheld the lines of transportation theretofore established between these sections by the government to be a most rewarding source of stock juggling if monopolized to the advantage of preventing competition. The deed was done. The transcontinental roads of the Northern Pacific and its parrallel competitor the Great Northern, controlled by Mr. James J. Hill and J. P. Morgan, together with the Union Pacific and Southern Pacific under domination of Mr. E. H. Harriman and the Rothschild house of England, were by the convolution of legal fiction transferred to the corporation termed the Northern Securities Co. This latter company owning all the stock owned by the other companies and itself owned by the owners of the constituent companies. This Frankenstein with its consuming jaws menaced the very freedom of the people of the coast, and struck desolation at the prosperity of the producers of the middle west. The cry went forth calling for salvation. Under the direction of the president the government intervened; and through appropriate action concluded in the United States supreme court, this Northern Securities trans-

portation monopoly was decreed to be in violation of the United States Statutes, as well as of the policy of the general law. It is to the after results I refer. So assured were the authors of the illegal scheme that no ill could befall howsoever the courts decide that not the least concern was disclosed during the pendency of the appeal, and on the morning of the day of the decision—dissolving the company as an illegal thing—Mr. Hill in public interview to the public press gave it out: "Decision or no decision, the men who hold this stock will use it as they please, the courts decide a great many things about which they know nothing; this is one of them. No court can run our property."

That afternoon Mr. Harriman is quoted as saying: "The case was made up by the politicians, and I can't say what will happen if politicians don't keep their hands off of the railroads. The court's decision is a blank. Railroad organization will go on and decisions can't stop it."

Soon there followed this *anarchy of arrogance* the positive decision by the United States supreme court in this same case confessing its impotency to interfere with Messrs. Hill and Morgan taking the same stock held by the Securities company and holding it in their personal name, and the court ratified as permissible the keeping all these roads in personal possession of these transportation Barons, though denouncing the evil of the act, as showing a spirit of no regard to the necessities of a people, and wanting in obedience to the object of the suit. Thus Doctor Jekyll became Mr. Hyde, and the sins of the first were shrived at the bar.

Of course when the defiance of the court and the open avowal to repudiate its decree by ignoring it

brought forth no penalty—but on the contrary as is shown by the report made to congress results in clear gain of more than \$238,000,000 to the stock speculators following the ability to defy and to avoid the order of the court. The Pennsylvania railroad absorbed its two parallel rivals, the Baltimore and Ohio; and Chesapeake and Ohio; then the New York Central in open insolence to the law took over its parallel rivals, the Michigan Lake Shore and Michigan Southern, and all of these have barred the gates of commercial thoroughfare against the advent of any new rival by controlling the legislatures and dominating the public officials. This invasion and usurpation justified under the plea of a business necessity. Truly ever the tryant's plea—necessity.

Immediately followed the strike of the telegraphers, along the line of Mr. Hill's road. You recall the disasters—trains blocked and blockaded. Collisions and ditching—upon the Montana division twenty lives went to eternity—(but being in the immigrant car, was not important enough to attract attention). The telegraphers had violated an injunction order of the court. They interfered with and intercepted the non-union telegraphers from work,—haled into court to answer contempt and for destruction of property,—note the defense. Resolution passed at Helena: "If the roads wont obey the supreme court of the United States or 'Jim J. Hill' can keep a monopoly of the railroad business and starve out the employees to long hours and short pay, why should the Brotherhood of Telegraphers pay any attention to the district court of Montana, which only obeys the Great Northern's finger beck:

"Resolved, to fight decisions which are for the em-

ployes to obey,—the owner to snap his fingers at.”

These barons have sown the dragon’s teeth,—they now hear the bark of the pack.

Who says history repeats itself,—rather does it not re-enact itself. How we lawyers recall the history of the refusal of the proprietors of the landed estates to heed or obey the charter contract of King John. How the lawyers protested against such defiance—the lawyers ever first to demand the law—ever first to brave censure of fools, for doing a patriot’s duty. The answer came from the landed proprietors: “Why should we obey; the prelates do not; the nobles will not, and Henry the King says the thing is foolish and treason.” It was this Henry III, who in retaliation for this noble insistence of our profession that the law be obeyed, gave out the malediction reserved by Shakespeare to the wrong Henry, saying, “First we’ll kill all the lawyers.”

In the presence of this spectacle of railroad defiance and union insubordination, it was that John Rockefeller, noting the passing of the anti-trust law in the house last session but one, and fearing its application to the Standard Oil properties, sent the famous telegrams from his palatial retreat on the Hudson to the United States senators saying, “I oppose that law against trusts. It’s foolish. I expect you to vote against it.” The law went to committee—there it sleeps. It was killed in obedience to dictate, though the party platforms pledged it, the people by vote instructed for it, but one man, speaking for the power behind and sustaining him, defied the will of the American people and defeated the combined law making power of the house of representatives;—an event in history equalled only by the incident of the

Triumvirate, red handed with the blood of sacrificed Pertinax, rushing out to the gates of Rome and auctioneering the world off to the highest bidder.

Then it was immediately following this event of Rockefeller; you recall that the unions of certain labor appellations demanded by their authority to dictate that the government printing house defeat the recommendation of the president requiring the government employment to be opened to all citizens who were competent to do government service. They repeated the provision and almost a revolution in the whole business of the government was precipitated in the keeping of one Miller, the non-union man, in the printing office, and as result the problem and agitation of the open or closed shop is with us, and no city or hamlet free from the inheritances of its distresses,—yet why should not these unions have the privilege to defeat the will of the president if the king of the money realm can defeat a whole people. If law is a rule depending on universality, why not an universal rule of defiance as well as of obedience?

The American people may, witnessing such as this, cry out with Othello:

“ . . . Rather be a toad  
And live upon the vapours of a dungeon,  
Than to own a corner in the things we love.”

But we pause to remark upon the effect these examples have on society. The inefficiency of and inefficacy of such as these educated offenders sitting in judgment or directing obedience.

To you members of the bar I must recur to two most flagrant instances of this inequality of judgment, this arrogant enjoyment of immunity from the law and its baleful effects. The late Secretary of the

Navy, Mr. Paul Morton, had as president of the Santa Fe railroad confessed the violation of the Elkins law, and the anti-trust act. Upon investigation committed to two distinguished lawyers, Judson Harmon, former Attorney General and Mr. Judson, a republican, the report was made; but because it was not as the president desired, it was ignored, and repudiated. It recommended that Mr. Morton be brought to the bar as one confessed of crime and if there existed a cause for exculpation to there disclose it. The president himself though professing the "square deal" and equality before the law, and that a public official should be as clean as a hound's tooth, in the face of and opposed to this judgment of two just men gave Mr. Morton a clean bill of character, exempted him from the recommendation of the selected court, and because of his position allowed the conclusions of Assistant Attorney General Day, saying that the prosecution would only serve a political object, to be an excuse for giving Mr. Morton exemption from the law. The president suspended a statute for a favorite. How we pause to note that no greater usurpation than this gave birth to havoc in the land of kings, by which the crown was struck from the head of one Stuart, the head from the shoulders of the other. After Mr. Morton was secure a certain insurance company, seeking one as pure as they, made him president, and he as his first act elevated the Assistant Attorney General Day from the place of Assistant Attorney General at six thousand dollars per year to the auditor of the insurance company at thirty thousand, as reward for his legal perspicuity and devotion to the theory, "the king can do no wrong."

Now behold the indicted insurance officials cry out:



"Are we worse than Morton? Why should he be allowed to prosecute us; just for the revenge of his clique who didn't 'get it,' but tried; when he stands confessed and exonerated, because a cabinet officer, and with guilt trailing after him." Is there not an equity in this contention? How lost in effect is the spectacle of Mr. Morton prosecuting an alleged offender. Our minds revert to the bible, as we recall the malediction of Saint Matthew: "Ye Pharisees and hypocrites. Ye are likened to whitened sepulchres which appear indeed beautiful outward, but are within filled with dead men's bones and all uncleanness."

Then Mr. Rogers of the Standard Oil who though seeking justice from the Missouri courts defies the attempt of Missouri to obtain truth or justice from him, casts disdain in the face of the judge, sends insolent messages of engagements for golf as preventing his attending the court, finally has his attendants set upon a process server and beat him into retreat as Crassus had his lictors do to the messenger from the roman senate, calling him to answer for the murder of free-men, who were cast into the Tiber at his dictation for knowing too much about the stealing of the Palatine Hill of the city.

On the next week a bakers' union treasurer, who as had the guilty labor union imposter Parks stolen his union's funds was in a civil proceeding sought of for the truth; he declined any reply because, I quote, "If Rogers of the Standard Oil company needn't answer, by opinion of the court, then he wouldn't" and he defied them. This defense though of course lacking in any applicability fitness to the precedent, yet struck Justice Ingraham so forcible that he adjourned the hearing to prevent sending the man to jail for con-

tempt and creating to ignorant minds the aspect of tyranny. What did the labor fellow know of the "want of jurisdiction or the absence of sovereignty." That in his case he was in New York in a New York action, while Rogers was in New York only as a witness in a Missouri action. The effect of the example was enough.

Hear the ancient Burton say:

"Is it with us as amongst those Lacedemonian Senators of Lysurgus and Plutarch, that the most virtuous rewarded, they favored only who deserved? No, we now have aristocracies wherein a few rich men domineer, do what they like and are privileged by their greatness to trespass. No man dare accuse them. They live after their own law, and by them riches and power can even obtain pardons from rulers, and redeem their souls from hell itself." From this came a Cromwell.

We repeat with Sallust the observation in the opening of the history of the Jugurthine war:

"Man is ever born after his kind to assail that which is weak, and to tear down that which he cannot defend. Once shown the cowardness or the timidity of his own institutions he hastens either through indignation or resentment to destroy what otherwise he could not construct."

The packers' trial is before us. We recall the conditions which gave rise to the proceeding. Contemplate them. Burke in the prosecution of Warren Hastings, defining the state of the persecution of East India men under the reign of Hyder Ali, said as a momentous figure of speech: "A nation stood in beggary." With us a people stood famished for meat necessary to give blood. They went on a hunger

strike to protest before the world against the infamy of the persecution of the meat monopolists. The monopolists were indicted; behold two plead guilty; they had made four and one-half million dollars out of the criminal project. They were fined twenty-five thousand dollars, in fact not one per cent. restitution of their admitted thefts then in their possession; the next day repeated the trick, and by legerdemain of finance raised beef one-half cent per pound and made you pay the fine.

At the same time the teamsters were on a strike, together with other laborers and violating an injunction preventing them from interfering with the non-union men working for the packers, are haled duly and rightfully as violators. They are not fined but jailed, I read a portion of the opinion:

"In these cases the judgment of the court will be that the defendant John Doe be committed to jail for four months; defendant Richard Roe for three months; defendant Stiles for three months. These parties and all others must understand and will understand, either by information from this court or from other sources, that this government of ours is one of law, and that lawless men must pay the penalty." That is judicial satire.

(While the proofs of this address are mailed to me for revision and correction, the district judge of the federal court for the southern district of Illinois, sitting in the northern district, has rendered an opinion exempting the remaining packers from any liability for violating the conspiracy laws criminal and civil and for violating the anti-trust law and the monopoly laws, civil and criminal. This was in the suit where the United States was the party plaintiff. It is upon

the ground that the packers were entitled to immunity from prosecution, for that through their innocence they had been induced to give information concerning their business matters in order to accomodate some political object of the president, and the commissioner of corporations. The court put forth that judicial paradox that the men who form the corporation are innocent but the corporation as formed was guilty. In other words, that the substance must go free and the form or shadow is responsible to the law. It is impossible to make the plain intelligence of an American appreciate this distinction, considered with any ideas of equality of justice. The judgment of the court will be an incubator to hatch socialists and anarchy.)

In the meantime the news is borne through the public press over the United States of America that Mr. George W. Perkins, officer of the New York Life Insurance Company, partner of Mr. J. P. Morgan, after confessing to the misappropriation of \$85,000 of the funds of widows and orphans and the converting the same into the hands of Mr. Cornelius Bliss, chairman of the Republican national campaign committee for the direct purpose of purchasing the American electorate, was proceeded against by the reluctant district attorney of New York in response to the expressed force of public opinion, indignant and aroused, and that when this confessed criminal was approached he was informed that it was the announcement from the district attorney of the great city of New York, that he, Mr. Perkins, should under no conditions be brought before a justice court. Under no conditions to be submitted to a formal arrest. Under no conditions to be seen in the contaminating company of an officer of

the law. So when in his cab *en tandem* he was brought to the court, the court with much apologies permitted the offender to make his appearance, his bow and his exit. The reported proceedings disclose that in order that this public offender be not humiliated with having the processes of the law served upon him through the ordinary channels applicable to every other citizen of the Republic, the assistant district attorney, Mr. Rand, was chosen to politely bow himself in "the perfumed chambers of the great" where sat the criminal, and with great apologies make known his business, and the report adds that Mr. Rand cowed and trembled as he gave to Mr. Perkins information that he bore the process of the courts against him, assuring him, however, that it was not the intention of the district attorney that he, Mr. Perkins, should be submitted to the course of an arrest or to the public gaze or to the companionship of any law officer, or to be called upon to appear before any person who was so subordinate as to perform the duties of a justice of the peace or police magistrate. The great offender is thus permitted to approach his arraignment like a king approaches a throne, and to retire from the same like a conquerer departing from a surrendered city.

At the same time we have the report through the same public columns of an individual arrested for stealing fourteen cents, having forcibly taken the same from the hands of one unable to defend. This form of embezzlement was punished by nine years in the penitentiary. One wrests the birthright of the American republic from the hands of its guardians, pollutes the ballot box, defies the constitution, debases the dignity of the courts, and for this is permitted to come and go with distinction and with

apologies made to him for assuming to bring him to answer. The other steals the proverbial penny and is at once confined as the ignominious felon. This scene is not inclined to attract much respect for the processes of the law, but rather invites us to the creed saying:

"The law ne'er fails to punish the man or woman  
 Who steals the goose from off the common,  
 But ever lets the felon loose  
 Who steals the common from the goose."

Is it not appearing that the bard hath spoken it well, saying: "Plate sin with gold, the lance of justice hurtless breaks; clothed in beggar's rags a pigmy's straw doth pierce it."

Now it is that a convention commended the slugging of weak and defenseless teamsters done by order of O'Shea. The killing of obstinate non-union men or employers who denied the authority of the tyrant of the teams. They placed their justification on the ground that as the law would not punish those who had wronged them, they had the right to take it in their own hands to revenge their own wrongs. It was the speech of the murderers in Macbeth, as

"Second murderer—I am one, my liege,  
 Whom the vile blows and buffets of the world  
 Have so incensed, that I am reckless what  
 I do, to spite the world.

First murderer—And I another,  
 So weary with disasters, tugged with fortune,  
 That I would set my life on any chance,  
 To mend it, or be rid on't.

Macbeth—Both of you  
 Know Banquo was your enemy.

Murderer—Trne, my lord,

\* \* \* \* \*

Murderer—We shall, my lord,  
 Perform what you command us."

The effect of this course is inevitable. It has but one. The government must perish when there are no laws, or when laws are no longer respected.

The method of transition and revolution in the systems of government and people can be said to be as follows:

First the powerful defy, then make the law a thing of discriminating injustice. The middle class understand and have a contempt for the government whose laws are defied by the powerful. The medium array fear law no further than it can inflict personal restraint or private fine, the taking of liberty or property. Its denunciations no longer frighten, nor its execrations visit any disgrace.

Social honor is ever established by the standard of those just beyond us. These superior have made it an event of *independence* to violate all law and *fashionable* to be indifferent to its penalties. Others who might have been graded less in the scale of social equation (as the effect of violation of law) a generation previous, are now flattered with the new conception that such course is the only proper thing in order to appear the equals of those from whom all respect for law has disappeared. The next step is plain. It is defiance of the government prescribing the law; the frustration of any attempt to execute its decrees. The lower or humble masses are at once appealed to because of numbers. They who have ever regarded law but as an instrument designed solely for their persecution, affecting to see at no time in law or government a purpose for their preservation, these gladly rush out of the doors into the highways shouting "down with the 'unjust' law", and in mob numbers over power the government constabulary, and either by frightening

the officers into inaction or making the hopeful of achieving office to behold how *unpopular*? the enforcing of the law, restrain all action. This results in the *death of the law*; the decay of authority and the destruction of order.

Chaos come again is the inevitable *end*; revolution the *final* inheritance. The ever next course by which those who let their rights be lost by losing regard for the rights of government can re-establish their existence in citizenship or save their lives and possession from the maddening orgies of those who have ever revelled in the blood and carnage of just such hours since government began. The Gladiators under Spartacus, the mob under Rienzi, Jack Cade's followers, Octavus Caesar after the death of Julius. It was the beginning and the course of the Girondists, Murat against Robespierre; Robespierre against Mirabeau; fire and ashes, the awful night of death and desolation before the morn of resurrected order.

As Machiavelli says: "Luxury and prosperity beget rest, and rest idleness, idleness arrogance, riot and destruction, from which we come again to good laws, and again good laws engender virtues, glory and prosperity."

Cicero said:

"Commonwealths like all organized creation have their time to perish and to fade, either in the blast of heat or the chill of neglect. Only when the law is justly administered and obeyed can government of free man survive."

And in this universal desolation what becomes of you, my brethern?

The records dislose that 47 of institutions declared illegal and in defiance of law were constructed by



those who assumed to be wiser than the lawyer and ignored him as a useless annex to material development.

Eleven heads of institutions sent to penitentiary for violation of law and criminal conduct in connection with trusts espoused to their keeping, nine admit they assumed to do what they did without the advice or knowledge of lawyers, saying as one put it: "We know business law better than lawyers, they are too technical, and want their own way."

Five institutions declared as being in violation of the fundamental law by the United States supreme court, beginning with the Pullman Palace Car Co. vs. Central Transportation, 139 U. S. to Northern Securities Case 18, disclose the lawyer seeking to evade the plain dictates of the statute and the known spirit of the institutions; at the demands of directors who dominate the enterprise and who use the lawyer only as an avenue to shape the design, or to be displaced if he dares set up a legal judgment, or one of duty of citizenship to their conceived scheme of financial piracy. One director in the testimony given at a well known investigation of a certain great insurance company (*nomen dishonorable*) saying: "We did not have to consult lawyers. They should be glad enough if we called them in when we got in trouble; it's a charity to them. We conduct our business in a business way. Can't be stopped by lawyers trying to find somehow where a thing is not just technically legal."

Can't this well explain the decadence of the business of the profession.

If the law shall no longer be respected, the following of it will no longer be honorable. If the law is no longer to be obeyed, there is no need for those

whose business it is to construe or apply it. If it is no longer the concern of men to obey the law, there is no longer need to declare it, nor of those to guide to its due and exact enforcement, and the result will be that we, as Othello, must be without occupation.

Under the sentiment now dominant the law ceases to be an instrument of justice and becomes a machine for moulding mischief. The lawyer no longer the true executioner of the right and the redresser of the wrong, but the inventor of criminal craft, the servant of discredited expedients, sans profit, sans honneur.

Gentlemen of the bar, it's to your preservation as being what you were and were intended, I address myself. It's to the respect due you and the due deference denied you that I insist shall be revived and re-established. The place of respect and honor to be again accorded you. Your nobility and royal patent of right to reverence and renown I demand to again reinvest you. Yours is a profession which in some form has walked beside the ages, the counsellor of its course, the director of its destinies. You are more time honored in your administration than any other pursuit of intellect not saving the sacred ministry.

To you I plead for the revival of the law of the rights of man to man. I cry aloud to you to stay the course of the slow but sure decay of the spirit of the law, and of the form of justice. You are the apostles to go and preach the gospel of law and obedience; to re-establish the superiority of the laws of right in the sacred court of conscience.

We can still proclaim the two immutable laws: "Thou shalt have no other God before me;" and that no false prophet shall lift up in the wilderness of our

confusion for worship the God of Gain before the God of Justice,—nor the highwayman wearing the livery of the honest toiler transform the nation's coat of arms from the shield of truth to the murder's mask.

The second is like unto it. 'Tis the sacred command thundered from Sinai, transmitted from mothers' lips to listening childhood proclaiming to men, that it is still the law of God, saying: "Thou shalt not steal."

Come let's make a new covenant, and on the altar of our faith vow that this nation is a government of laws. That liberty shall be her promise to men, but, as said by Edmund Burke,—it shall be liberty under law. Let us herald anew the old faith that this republic is the creation of the will of law-abiding citizens. It was dedicated by the fathers to the cause of equality before the law among men, and consecrated in the blood of the sons to the truth that it shall remain a republic under God. No man can be great enough to defy the expressed will of the people, and no numbers sufficient to terrorize the spirit of order into yielding obedience to the mob.

Let us assert that the man who assumes to oppose himself against the institutions of his country is a traitor, and should be unfrocked of his citizenship. That this class of outlaws, high or humble, shall receive the ostracism of respectability, and the condemnation of honest men. By this law of proscription the sense of realization that this country is controlled by courage and honor will again be brought to the consciences of those whose conduct has so far assaulted and imperilled the just citizenship of the nation.

If the state seems to languish for want of patriotism

and the citizen despair of the returning spirit of honor, let them but turn to such as these—the bar—ever loyal to the right, faithful to the law, and devoted to justice, and from this exuberant bosom draw again the springs of patriotism that, re-animated and re-inspired, he may take new hope for his country and rejoice in the glory of citizen and the immortality of the state.













JOHN M. WHITEHEAD

## WISCONSIN STATUTE LAW.

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BY HON. JOHN M. WHITEHEAD.

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The statutes of Wisconsin have passed through seven editions. From the "advertisement" which appears next to the title page of the Statutes of the Territory of Wisconsin, the first edition, it appears that a committee was appointed by resolution at the legislative session in December, 1838, "to revise the laws of the territory and report the result of their labors at an adjourned session." The committee consisted of six persons. Among them was Chief Justice Whiton. "The committee, during the recess of the legislative assembly (which continued only for a period of about thirty days), prepared, and at the next session which succeeded reported numerous bills," which, with amendments, were passed and formed the principal part of the laws contained in the volume above referred to.

Section one of the second act of this volume reads: "The laws of the territory of a general nature shall be arranged in a proper order, printed on good paper, and handsomely and substantially bound in calf, and shall be ready for distribution on or before the first Monday of July next, (1839), after the passage of this act."

Section ten of the same act reads: "Edward V. Whiton is hereby appointed to carry into effect the provisions of this act and to prepare the proper marginal notes and index to accompany such edition; and

the laws included in said volume shall be certified by him, under oath, to be a true copy of the statute laws on file in the secretary's office."

In the "advertisement" referred to, dated June, 1839, and signed by Edward V. Whiton, it is stated: "The index is not as copious as the subscriber wished or intended, but he did not feel at liberty to delay the publication of the work beyond the time when the laws are to take effect for the purpose of making it more perfect; had longer time been allowed, it would have been prepared in a manner more satisfactory to him and undoubtedly more acceptable to the public."

Where a superfluous word was found in the enrolled bills, it was printed in the text in italics and enclosed in parentheses. If a word were found necessary to sustain the sense of the context, or used erroneously for another word, the missing or proper word was supplied in brackets, but the text of the bill on file was not altered.

The volume consists of four hundred seven pages, which average slightly less than six folios to the page. It is purely a compilation. The enacting clause precedes each particular act. The acts are divided into sections, independently of each other. The arrangement of subject-matter in a general way is the same as has been maintained throughout all the subsequent editions of our statutes. These acts were largely borrowed from the older states, and those borrowed from neighboring western states, such as Michigan, Illinois, Indiana, and Ohio, had originally been borrowed by those states from the eastern states, especially from New York, Massachusetts, and Connecticut. The style is, in the main, good. The sentences are usually simple and the sections are short. The annotations

on the margin made by Chief Justice Whiton are very serviceable, and the index enables one readily to find that which he may be seeking.

The second edition of the statute was authorized by the legislature of Wisconsin in July, 1848. We learn from the "Advertisement" in this volume that three commissioners were then appointed "to collate and revise all the public acts of the state of a general and permanent nature in force at the close of the session" and to report their completed work at the next session of the legislature.

In August, 1848, so runs this "advertisement", "the commissioners commenced their labors, and were engaged in the revision the greater part of the time until the close of the next session of the legislature which met in January, (1849,) being nearly seven months. The work of revision, owing to the confusion of the laws and the changes and new provisions which were required by the constitution just then adopted, was found so great that the commissioners early foresaw it would be impossible for them to revise and report the entire body of the statutes within the time contemplated by the act authorizing and appointing them." They therefore selected certain portions which they completed and reported. Their report was adopted substantially as made.

At the legislative session of 1849, there was a joint committee of the legislature appointed to co-operate with the commissioners. The committee and the commissioners divided their work; the former continuing the revision in the manner in which it had been previously pursued, and "the latter compiling those laws which the commissioners reported they would not be able to consider." Each body "pursued their

labors separately and, owing to the limited time they had in which to accomplish them, it was impossible to review together the chapters they severally had under consideration, previous to reporting. In order, also, to despatch the great amount of business the committee had in charge, it was necessary, as to part of their work, to distribute it to sub-committees whose labors could not always be examined by the whole committee."

It was unavoidable, from the amount of labor imposed upon the commissioners and the joint committee, and the brief time allotted for the performance of the work "that some repetition and conflict of provisions" should appear in the statutes that might have been prevented had the entire revision been made by a single committee acting together.

One of the commissioners was designated to carry the work through the press. He arranged the chapters and title as he thought proper, transferred sections from one chapter to another, wherever he thought the arrangement of subject-matter required such transposition to be made. "He endeavored to arrange the entire work in a natural and systematic order, so that those provisions which pertained to the same subject should be found together in one place." Marginal notes and an index were prepared by him with respect to which he says that, "could he have bestowed more attention upon their preparation," he could have avoided some errors that occurred.

The division of the statutes into parts and titles adopted for this edition was substantially the same as we now have, the chapters treating of correlated subjects being gathered under a particular title, and the chapters themselves divided into sections independ-

ently of each other. The volume contains an appendix, comprising acts which relate to the judiciary, university lands, and several other subjects. The volume was called by authority of the statute "Revised Statutes". The style is about the same as that of the Territorial Statutes. The sections are short, and, with the aid of the index, the subject-matter of the statutes is readily separated for practical use. The great body of many sections and chapters remain unchanged to this day.

Chapter 120 of the laws of 1856 is entitled "An Act to Simplify and Abridge the Practice, Pleadings and Proceedings of the Courts in this State." This chapter comprises the code. The style in which it is written is simple and concise. It illustrates what statutory compositions may be and ought to be. Short sentences, simple for the most part, rather than compound, short sections, treating of a single proposition, are the rule. Logical arrangement, definite, clear, concise statement are the striking characteristics of the entire chapter.

The third edition of our statutes is known as the "Revision of 1858." Commissioners were appointed under the authority of chapter 126 of the laws of 1856 "to collect, compile, and digest the general laws of this state, for the purpose of preparing a new edition of such laws for publication;" and "said revisors (were required to) report such compilation as soon as might be to the legislature of Wisconsin, and to accompany their report with such proposed amendments as they might think proper to suggest." From the prefatory statement in the volume, we learn that "the time limited for completion of the work was very short (about twenty-eight weeks), and involved the neces-

sity of the division of the labors and duties between the members of the commission." The commissioners endeavored to simplify and harmonize the system of laws under which the state had grown up. The report of the revisors was taken up late in the session, "many enactments were made, some of which were not sufficiently considered in their bearing upon the whole revision," and, owing to the shortness of time, some errors crept into the enrolled bill.

The revisors of 1858 adhered to the arrangement into parts and titles adopted by the revisors of 1849, and also preserved the system of marginal annotations. The volume contains about the same amount of printed matter upon the page, but as against eight hundred pages in the revision of 1849, the revision of 1858 comprises one thousand and ninety-three pages. The space occupied by the index is not counted in either volume.

In 1871 David Taylor issued his "Statutes of Wisconsin" in two volumes, each of which contained about the same amount of matter as the revision of 1858. It is simply a compilation. He follows the arrangement of the Revised Statutes of 1858 as to parts, titles, and chapters, incorporating at what he deems the proper places the new enactments in additional sections. Judge Taylor introduced the system of annotations, which has since been kept up, showing the origin and history of each section. A good deal of space is occupied in this way in Judge Taylor's volumes, and the tables of contents also take up much room at beginning of each chapter. The marginal annotations of the first two editions are omitted.

Chapter 203 of the laws of 1875 authorizes the justices of the supreme court "to appoint three compe-

tent persons to collect and revise the general laws of this state for the purpose of preparing a new edition of such laws for publication." The revisors to be appointed were directed to enter upon their work as soon as practicable and report the whole work to the legislature next succeeding its completion. A distinguished commission was appointed, consisting of Judge David Taylor, Hon. William F. Vilas, and Hon. J. P. C. Cottrill.

At the legislative session of 1877, by chapter 298, the justices of the supreme court were authorized, if in the opinion of a majority of them it should "be necessary to do so, to insure a report from the revisors for the first day of the next session of the legislature, so that such legislature might be able to act upon the proposed revision of the statutes . . . to appoint such additional member or members of said board of revisors (not exceeding two) for such length of time, and assign to them such duties with respect to such revision, as to said court might seem proper."

Judges Harlow S. Orton and J. H. Carpenter were added to the commission, and we are informed by the preparatory statement in the volume known as the "Revision of 1878" that Judge Orton prepared Part Four of that revision, relating to criminal law, while Judge Carpenter prepared Title Twenty-Nine, entitled "Proceedings in County Court."

A joint committee was appointed by the legislature of 1878, which was instructed to co-operate with the revisors and incorporate the general acts of that legislative session in the revisor's report. The report of the revisors was made at the special session of June, 1878. The division of the statutes into parts, titles, and chapters adopted in the preceding editions of



1849 and 1858 was in a general way adhered to, but much improved, but the consecutive numbering of the sections was a new feature. The marginal annotations were restored, covering both the subject-matter of the section and, citations of supreme court decisions affecting the section. Tables of contents were inserted after the titles, giving merely the chapters embraced in the title and the general subject-matter of the respective chapters.

This edition of the statutes is an admirable piece of work. The commissioners who carried the work through the press conclude their preparatory statement thus: "For such defects as shall be found to have intervened, the shortness of the time allowed us ought to be accepted as a sufficient apology."

About 1885, Messrs. Sanborn and Berryman compiled a supplement to the Revision of 1878, which comprised the laws subsequently enacted with an elaborate system of annotations of references to decisions. This proved to be a very valuable book, and its value was recognized by the state by the purchase of volumes for the court and public officials.

Chapter 222, laws of 1889, authorized Messrs. Sanborn and Berryman to "prepare and publish, or cause to be published, the general laws of Wisconsin which should be in force at the close of that session of the legislature, together with notes and cases decided by the supreme court of this state which construe or apply to such statutes, notes of such other cases and other matter as they may deem proper."

The work of these compilers appeared in two volumes in 1889, known as "Sanborn and Berryman's Annotated Statutes," each volume containing more pages than the Revision of 1878, including the elabor-

ate index to that volume. The work was a compilation, and was most favorably received by the bar on account of the care with which it had been prepared and the scope and usefulness of the annotations.

Chapter 306 of the laws of 1895, authorizing Messrs. Sanborn and Berryman, "the compilers of the 'Annotated Statutes' of Wisconsin to prepare and publish in two volumes of about four thousand pages, more or less, as soon as practicable after the adjournment of the legislature of 1897, the public general laws of the state of Wisconsin which should be in force at the close of the first session of the legislature of 1897, together with notes of cases decided by the supreme court of this state, which construe and apply to such laws, notes of such other cases, and such other matter as they might deem proper." Such statutes were to "be compiled in the general form and style of the Annotated Statutes, preserving the sectional arrangement and numbering of the Revised Statutes of 1878 as far as possible, and designating new sections by the use of numerals and letters as in the Annotated Statutes."

The compilers were "appointed as a committee without compensation to prepare and report to the legislature of 1897, at the commencement of its first session, bills for the correction of such errors and to harmonize such discrepancies in the statutes as they should deem advisable, together with such additional sections as they should deem proper to carry out the general design and spirit of the statutes."

The revisors were further directed "to accompany the bill so to be reported by them with a report showing the necessity and advisability of the various sections of the bill so reported . . . and the bills

were to be "so drawn as to clearly exhibit each change, verbal or otherwise, so proposed by them," so that it might be readily seen what part it was proposed to modify. At the session of 1897, the compilers above named made their report, accompanied by a bill entitled "To Revise the General Statutes." The bill covered the whole subject, retaining in a general way, the parts, titles and chapters that had been in use since the first edition of 1849. With the bill, they submitted a report outlining the general scope of the work which they had performed.

It was a monumental task assigned to these gentlemen, the revision of the whole body of the statutes of this state, contemplating the two volumes which we now have, comprising nearly four thousand pages of printed matter.

I had the honor to be a member of the senate at the session of 1897 and to be assigned a place on the joint committee on revision, which was then created. My personal acquaintance with and study of this important subject of statutory revision thus began, and my equipment was simply that of the ordinary country practitioner, with but a few years of practice to draw upon for experience in the use and application of the statute law. There was presented to me for my consideration a printed bill of about twelve hundred pages. It was expected that the committee would give the subject matter of this bill careful consideration and report in due time to the legislature their conclusions with respect to it. The committee discovered very quickly that it would be impossible to give the bill any attention while the other work of the legislative session was in progress. They therefore laid it aside with the understanding that they

should have sufficient time after the adjournment of the regular session, and before the convening of the special session, to do their work. The legislature took its first adjournment April 24th, to convene in special session August 17th. The committee began its work about the middle of June, and continued in daily session until it completed its report for the special session. The report of the joint committee comprises nearly seven hundred pages.

You will observe that the work of the joint legislative committee was completed in about two months. "On the 18th of August," quoting from the preface of the statutes of 1898, "the bill was referred to the committee and on the 19th was, after consideration of a few of its sections by the committee on revision, and the Judiciary committee of each house, reported with a few amendments, and passed without further amendment on the 20th of August, being approved on the same day." Think of it! The entire body of the statute law of this state, comprised in two massive volumes, representing the general legislation of more than fifty years, revised in two months, examined by the committee having the original bill in charge, and passed upon in a few hours. It is not surprising that the bar are already talking about another revision of the statutes, nor is it in any wise a reflection upon the distinguished compilers who had the revision of 1898 in charge, nor upon the members of the joint committee of the legislature who assisted the revisors during the summer of 1897. The act of 1895, authorizing this revision, was in accord with the general ideas of the provision of that time as to the need and method to be pursued in meeting the matter of a revision, and was also in accord with methods that had

hitherto prevailed in this state and in other states with reference to the statute law with which our lawyers are more or less acquainted.

The question now before the legislature of this state, and before the lawyers, is what methods in future shall be pursued and what shall be aimed at in the revision of our statutes. To my mind it is clear that a general revision should not again be undertaken. Revision should be by topics, and it should begin at once in the legislature. Bills as introduced should be located as far as possible in sections of the statutes. Careful preparation of such bills by lawyers, and efforts properly to locate them, will at once attract attention to the provisions of law already in force. The diffuseness of the statutes is due to the fact that bills are frequently prepared regardless of the laws already upon the books. Not a little of the legislation is re-enactment in one way or another, of legislation of long standing.

An examination of a few subjects will illustrate what I have in mind with reference to the present condition of our statutes, and a topical revision. There are many ways of transferring the title to real estate by judicial proceedings. I cannot see why there should be such a variety. The parties interested are entitled to the completest proceedings, and those which are least expensive. The results are the same if the sale be properly held by the sheriff under a money judgment as a sale conducted by the administrator under an order of the county court, viz., the transfer of the interest of the former owner to the purchaser, by means of which money is realized to pay the owner's debts. Is there any good reason, for instance, why the notice should be published for a

different number of weeks in one case from what it is in the other.

The code of 1856, a model of simplicity and brevity of statement, defines an action and the pleadings therein, and yet we have interpolated in many places in the statutes, miscellaneous enactments providing procedure in courts, where the results sought are practically the same as were to be obtained by an action brought under the code. Many provisions with reference to proceedings before commissioners of different sorts, before different boards, and methods of appeal are provided for in a most elaborate way. Would it not be to the advantage of the statutes and to all who are practicing law if a well established procedure were devised, whatever the board or commission might be from which relief were sought, or from whose action an appeal was to be taken?

The law of eminent domain illustrates the diffuseness of the statutes. Wherever it is proposed to give a public utility the right of eminent domain the whole procedure is outlined as if no such legislation had ever elsewhere been enacted.

State boards are created under many different chapters, and yet the details as to the number required to constitute a quorum, the adoption of by-laws, the officers of the boards, and their duties, are set forth in detail in each chapter. It would seem that general provisions might cover all these things that are common to all such boards and bodies once for all, with very great gain of simplicity and compactness of statement in our statutes.

Official bonds and oaths are dealt with in great detail with reference to many different officers. It would seem entirely uncalled for to occupy so much

valuable space in the statutes with so many repetitions when a general direction for all in one place might be given. It ought to be the rule that a given subject should be treated but once in the statutes, and that the general provisions so made should be made available by a simple enabling statute passed whenever the occasion should require.

Lawyers are to blame for the diffuseness of the statutes. They draw bills as they draw pleadings. They do not make the terse, simple statements of the writer of the code of 1856, but the voluminous style of the pleader is followed.

I have given a few illustrations of what anyone may discover in the most cursory reading of our statutes.

Revision should be topical. Statements should be simple and plain. Simple sentences rather than compound should be used. Distinct propositions should be stated separately. Long sections should be broken up into as many and as short sub-divisions as possible, and no re-enactment of a law should be permitted.

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# MEMOIRS.

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## PREFATORY NOTE.

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The following are biographical sketches of members of the bar of Wisconsin, whether members of this Association or not, who have died between February 12, 1903, and March 14, 1906.

The present collection of sketches is presumed to be incomplete. Besides the deaths which have escaped the writer's attention, there have been cases where relatives and friends of deceased lawyers have not taken sufficient interest to respond to requests for information.

There are inserted some biographies of persons who died prior to the earlier date above given.

WILLIAM W. WIGHT, *Chairman*,  
Milwaukee, Wisconsin.



## MEMOIRS.

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### WILLIAM JUDGE ALLEN.

Born: Enniska House, Newport, Limerick, Ireland,  
January 22, 1835.

Died: Milwaukee, Wisconsin, April 16, 1905.

Before he was fifteen years of age young William removed to Canada and engaged in the dry goods business. Later, in the interests of the same business he removed to Chicago, Illinois, and there resided until he removed to Palmyra, Wisconsin, for the purpose of studying law. While residing in Palmyra he was admitted to the bar.

Upon the invitation of Judge A. L. Collins and of Judge Pulling he went with them to Menasha, Wisconsin, to manage the landed interests of former Governor Doty. Mr. Doty resided in a picturesque log cabin on Doty's Island, now a part of the popular Robert's resort. Mrs. Doty took young Allen into her home and heart and he became so much a member of the family that several years later it was in his arms that the venerable lady breathed her last.

While beginning his legal career in Menasha a summons from Ireland called him to his mother's death-bed. He married in Ireland but upon his wife's death four months after marriage he returned to Wisconsin.

As the Doty family was then residing in Oshkosh, Mr. Allen took up his residence there and formed the law partnership of Allen and Freeman.

About 1873, upon the invitation of William S. Warner, Mr. Allen removed to Appleton, where was established the influential and flourishing firm of Warner, Ryan and Allen. About three years later, he opened an office alone in Appleton, where he practiced his profession until 1888. In that year he removed to

Milwaukee and accepted a position in the offices of Winkler, Flanders, Smith, Bottum and Vilas. Five years later he opened an office alone in the Mack Block and devoted his energies to the compilation and publication of an Index Digest of the Wisconsin Decisions. During the three years before his death he had been unable to do office work.

*Reference:* Sketch furnished April 12, 1906, by his widow, Mrs. Josephine S. Allen.

### ABRAHAM CLOSE BAILEY.

Born: Waterford, Rensselaer county, New York, July 8, 1814.

Died: Janesville, Wisconsin, April, 1861.

When Abraham was a year old, his father moved to New York City to engage in the mercantile business with his brother, John Bailey. At the age of three years, Abraham commenced attending a private school where he studied until he was placed in a boarding school at Kinderhook. Graduating from there in 1830, he entered Union College, Schenectady.

Dr. Eliphalet Nott, who has the record of serving the longest presidential term in the history of colleges in the United States, was then president, and Alonzo Potter, late bishop of Pennsylvania, was the professor of rhetoric and ethics. Finishing his college course in 1834, he began reading law in the office of Judge Hayes of Schenectady.

His father having retired from business, he returned to Waterford to live. Mr. Bailey finished reading law with Judge N. B. Doe of Waterford. He was admitted as an attorney of the Supreme Court by Chief Justice Nelson in 1837.

He began the practice of law, but, in 1839, he and his cousins, Eliphalet and William Cramer, decided to go West and look over the country. Taking the boat at Buffalo, they made the journey via the Great Lakes to Milwaukee. From there they took a wagon over-

land to Janesville, attracted by the fertility of the land in this vicinity. Part of the way was through a swampy district which had been made passable by a corduroy road. One of the party remarked when they struck this road, that Janesville must be Paradise for they were passing through Purgatory to get there. Here Mr. Bailey bought land, but his cousins, seeing the possibilities of Milwaukee as a commercial center, returned there to invest.

Remaining in Janesville for a year, Mr. Bailey was admitted as an attorney to the Supreme Court of Wisconsin. He then returned to Waterford, and in May, 1842, was married in Grace Church, Albany, to Sarah Viola Prescott. He brought his bride to Janesville where he made his home until his death. He saw Janesville grow from a small village of log huts, containing but one frame house, to a prosperous city. He built one of the first brick houses in Janesville, which is still standing on North Main street, being the only one left of three built about the same time.

He held the offices of court commissioner, justice of the peace and judge of probate. Isaac Woodle and James H. Knowlton read law in his office. He never associated himself with any firm but Judge E. V. Whiton, at one time occupied the same office with him.

His health, which never had been good, became so impaired that in the fall of 1860 he went to Racine for treatment. While there he contracted a severe cold which culminated in quick consumption, causing his death in April of the next year.

## CHARLES VALDO BARDEEN.

**Born:** Brookfield, Madison county, New York, September 23, 1850.

**Died:** Madison, Wisconsin, March 20, 1903.

Judge Bardeen was the son of a farmer of Scotch or Scotch-Welsh descent. In 1854 the family removed to Albion, Dane county, Wisconsin, where Charles divided his time between the farm and the country school. For about six years, beginning in 1864, he attended the academy at Albion and graduated therefrom in 1870. Immediately thereafter he entered the office of J. J. Towne of Edgerton, Wisconsin, and began to study law. In the fall of 1871 he intermitted his studies and went to Colorado to try the life of a merchant there. In two years, however, he returned to Edgerton. From Mr. Towne's office he went to Madison and entered the law department of the University of Wisconsin, whence he graduated in 1875. Upon graduation he, with Roger C. Spooner, opened in Wausau the law office of Spooner and Bardeen. A short time afterward the name of Charles H. Mueller was placed at the head of the firm. This firm disintegrating after a time, Mr. Bardeen associated with John A. Kellogg, the firm continuing until the latter's death in 1883. There was then formed with W. H. Mylrea and later with Louis Marchetti the firm of Bardeen, Mylrea and Marchetti, which continued until Mr. Bardeen became by appointment judge of the Sixteenth Judicial Circuit, January 1, 1892. Elected for a full term the ensuing April he served until February, 1898, when he was appointed by the then governor, Scofield, to the vacancy on the Supreme bench caused by the death of Justice Newman. He was serving upon this bench when he died.

Before becoming a judge he had shown his interest in public affairs by holding other positions. For many years he was superintendent of schools in Wausau and in 1889 was elected city attorney for the same city.



**CHARDES VALDO BARDEEN**





To the discharge of the duties of the office of circuit judge "he consecrated his talents, his industry and his judgment which had matured and ripened by the experience of years. No labor was too great if thereby he might ascertain what the voice of the law was. . . . He brought to" the Supreme "bench the same fidelity, industry and ability which had marked his whole life. His written opinions contained in eighteen volumes of the Reports, constitute a more convincing and durable memorial to his ability as a lawyer and a judge than any eulogy which could be written. . . . They will rank well with the opinions of the state's greatest jurists."

*References:* 119 Wisconsin xlii, where are found, among other tributes, the remarks of Justice Winslow, from which are the above quotations; Milwaukee *Sentinel* of March 21 and 23, 1903, in the first of which is a life-like portrait.

#### LYMAN EDDY BARNES.

Born: Weyauwega, Wisconsin, June 30, 1855.

Died: Appleton, Wisconsin, January 16, 1904.

In youth he removed with his parents to Oshkosh, where he received his academic education, and began study preparatory to education for the law. After remaining in the offices of Earl P. Finch and Charles Barber for some time, he pursued the regular law course at Columbia College, New York, from which he graduated in 1876. Having been admitted to the bar of Outagamie county, he located in Appleton in 1876, and soon thereafter formed a co-partnership for the practice of law with the Honorable John Goodland, now judge of the Tenth Judicial Circuit. In 1882 he removed with his family to Rockledge, Florida, where for four years he was engaged in business and the practice of the law. In 1886 he returned to Appleton, and resumed his co-partnership relations with Mr. Goodland. In the winter of 1891, the office of district attorney for Outagamie county became vacant by the resignation therefrom of Mr. Goodland, and Mr. Barnes was appointed by the then gov-

ernor, George W. Peck, to fill the office for the unexpired term. At the congressional election for 1892, Mr. Barnes was elected as the democratic candidate to Congress from the then Eighth Congressional District of Wisconsin. Upon the expiration of his term in Congress, he resumed the active labors of his profession at Appleton.

"He was always interested in matters of local public concern, and gave his time and efforts freely to the Appleton Public Library and like educational and charitable institutions."

*References:* Appleton paper of contemporary date, from which above quotation is taken; Wisconsin Blue Book for 1899, page 208; 122 Wisconsin Reports xlv; Report of the American Bar Association for 1904, 871.

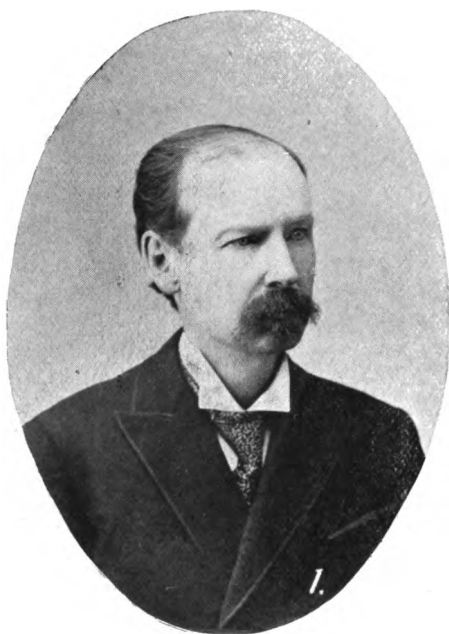
### JOHN W. BASHFORD.

Born: Fayette, La Fayette county, Wisconsin, October 1, 1847.

Died: Hudson, Wisconsin, March 27, 1905.

Young Bashford received his early education in the La Fayette high school, where he prepared for the University of Wisconsin. From this last he graduated in 1871. He then taught school at Mineral Point and at Shullsburg. Determining on a legal career he studied law in the office of Vilas and Bryant, Madison, and attended the law school at the University. He graduated in 1874 and in that year was admitted to the bar at Madison. Governor Taylor appointed Mr. Bashford state agent for the Wisconsin Land Grant Company and thereupon removed to Hudson, where he opened up a law office with John E. Glover as partner. This firm was dissolved in 1876 and Mr. Bashford had no partner until 1882. C. A. Disney then became his partner and so continued until 1894. During his career at the bar Mr. Bashford participated in much important litigation and was usually successful.

He was city attorney of Hudson for eleven years,



**JOHN W. BASHFORD**



was mayor of that city, and for six years a member of the board of regents of the State University. "There are few men in the state who can point to a career exemplifying more thoroughly the result of industrious application and never-failing hard work."

*Reference:* Berryman's History of the Bench and Bar of Wisconsin, II, 306, from which above sentence is quoted.

### MARK H. BARNUM.

Born: New York, March 14, 1834.

Died: Wausau, Wisconsin, August 1, 1904.

Mr. Barnum removed to Wausau in 1857 and was elected district attorney the next year. He served in the Union army two years. In August, 1877, he founded at Wausau the *Torch of Liberty*, a weekly paper devoted to the greenback platform, and later to the interests of the working classes. He conducted this paper until September, 1894.

"Mr. Barnum was an able lawyer and as editor of the *Torch of Liberty* he became known throughout the state as a fearless writer. On the stump he had few equals as a forceful speaker."

*References:* Catalogue of newspaper files in the library of the State Historical Society of Wisconsin, 1898, page 205; *Milwaukee Sentinel*, August 2, 1904.

### EDGAR MARTEL BEACH.

Born: Ohio, August, 1839.

Died: Waupun, Wisconsin, January 21, 1903.

Mr. Beach was admitted to the bar at Fond du Lac, Wisconsin, and resided at Waupun thirty-nine years. He held a high position in his profession and as a churchman and philanthropist. He was one of the trustees of Lawrence University, to which institution he gave in 1901 ten thousand dollars to establish the E. M. Beach chair of the English Bible.

*References:* *Milwaukee Sentinel*, January 23, 1903; letter from Mrs. Beach of March 7, 1906.

## WILLIAM G. BEEBE.

Born: New Lisbon, Wisconsin, October 13, 1867.

Died: Near Mauston, Wisconsin, October 21, 1904.

He was educated in the high school at New Lisbon, from which he graduated in 1886. He studied law in his native place with J. J. Hughes and then attended the law department of the University of Wisconsin, from which he graduated in June, 1891. He was admitted to the bar June 17, 1891, and opened an office in Mauston in November, 1891. He formed a partnership with H. W. Barney, which continued three years. In the spring of 1893 he was elected municipal judge of Mauston, a position which he resigned two years later when he assumed the office of district attorney of Juneau county. The latter position he held for two years and in 1897 he was elected county judge of Juneau county, which office he was holding at his death. Accidental drowning was the cause of his death.

*References:* Milwaukee *Sentinel*, October 23, 1904; Berryman's History of the Bench and Bar of Wisconsin, II, 240.

## MONROE BENTLEY.

Born: Binghampton, New York, April 9, 1836.

Died: Baraboo, Wisconsin, May 17, 1903.

Monroe graduated from La Grange Collegiate Institute, Ontario, Indiana, in 1853. Removing later to Wisconsin he was engaged as a pilot on lumber rafts on the Wisconsin river, running what is known as the famous Dells Rapids. While teaching school at Poynette, Wisconsin, in 1863, he enlisted in the service of his country in the war for the Union. Severe illness, however, caused his discharge after about eight months of service.

His residence was at Baraboo, Wisconsin. Of this town he was chairman before it was incorporated as a village. He served as justice of the peace for ten years. In 1878 he was admitted to the bar and was



**MONROE BENTLEY**





in continuous practice until his death. He was at his death the oldest practicing attorney in Baraboo.

He took an active part in temperance work. He was a faithful member of the Methodist Episcopal church and served the same in an official capacity for many years and until his death.

"He was a man of deep and firm convictions and ardently espoused any movement he thought was right."

*Reference:* Letter, February 5, 1907, from his son, F. R. Bentley of Baraboo, from which above quotation is made.

### SAMUEL BISHOP.

Born: Victor, New York, February 15, 1827.

Died: Whitewater, Wisconsin, February 5, 1904.

Mr. Bishop removed to Milwaukee, Wisconsin, about 1854 and for some years practiced law in that city. He practiced law afterwards in other places in Wisconsin, especially in Fort Atkinson. In or about 1874 he removed to Whitewater, which was his residence until his death. When Whitewater became a city, Mr. Bishop was elected its first mayor. He had been village attorney and also city attorney of Whitewater.

"He was a kindly disposed man, a man of honest convictions, without ostentation or the putting on of anything unnatural or unreal, or anything that he did not mean; but he was a plain, simple, so far as conduct is concerned, kindly disposed man."

At different times Pitt Cravath and J. H. Page had been his partners.

*References:* Whitewater newspaper of February 9, 1904, and March 4, 1904. The latter contains memorial exercises held before the Circuit Court of Walworth county at Elkhorn, Wisconsin, and the above quotation is from an address delivered on that occasion by Mr. Barnes of Delavan. Resolutions prepared by committee, of which H. O. Hamilton, of Whitewater, was chairman, was ordered spread upon the records of the Association.

## ALEXANDER CAMPBELL BOTKIN.

Born: Madison, Wisconsin, October 13, 1842.

Died: Washington, District of Columbia, November 1, 1905.

Mr. Botkin graduated from the University of Wisconsin before he was seventeen years of age, and from the Albany, New York, Law School in 1866. He was for about five years editor of the *Chicago Times* and afterwards of the *Milwaukee Sentinel*. In 1878 he was appointed United States marshal for the territory of Montana. While performing his duties, one day in December, 1879, when the thermometer registered 52 degrees below zero, he lost the use of both his legs by a hardening of the spinal marrow in consequence of the exposure.

Yet no diminution of his energies occurred. His energies were confined to a wheeled chair, but, seated therein, he spoke at political meetings and attended to the practice of his profession. He was the first governor of the state of Montana, but went down with the entire republican ticket when a candidate for a second term.

He was appointed one of a commission to codify the criminal and penal laws of the United States and was the chairman thereof. The labors of the commission were extended to the preparation of a system of laws for Alaska and then to the revision of the laws relating to the jurisdiction and practice of the United States courts. He was engaged upon this labor when he died.

*Reference:* *Milwaukee Sentinel*, November 2, 1905, where is a portrait.

## HARRY E. BRIGGS.

Born: Galesburg, Illinois, February 18, 1865.

Died: Pueblo, Colorado, February 24, 1903.

The family of Mr. Briggs moved to Madison, Wisconsin, in 1880, and from that year until the fall of 1898 Mr. Briggs resided there continuously. He



**HARRY E. BRIGGS**



graduated from the University of Wisconsin in 1887, and from the law department in 1889. While studying law he was in the office of La Follette, Siebecker and Harper. Upon his admission to the bar, he became a member of the law firm of Lewis, Pfund and Briggs, and later of Lewis and Briggs. In the fall of 1890 he was elected as a democrat from the Madison district to the assembly. In May, 1894, he was appointed by President Cleveland as United States attorney for the Western District of Wisconsin, and served during his term of four years. In the fall of 1898, upon failure of his health, he removed to Phoenix, Arizona, where, and at San Diego, California, and at Pueblo, Colorado, he in vain sought restoration to health.

*References:* Milwaukee *Sentinel*, February 26, 1903; Wisconsin Blue Book, 1889, page 161.

### GABRIEL BOUCK.

Born: Fulton, Schoharie county, New York, December 16, 1828.

Died: Oshkosh, Wisconsin, February 21, 1904.

He graduated from Union College. In 1848 he removed to Wisconsin and entered the law offices of Finch and Lynde. He was admitted to the bar in 1849 and not long after he removed to Oshkosh. He served as attorney general of Wisconsin from January 4, 1858, to January 2, 1860. He served in the assembly during the sessions of 1860 and 1874, being speaker in 1874.

When the war of 1861 broke out he enlisted as color guard of the Second Wisconsin Volunteers and was promoted from time to time until he became colonel. "Bouck was a brave soldier and loyal supporter of the government."

He represented the Sixth District as a democrat in the 45th and 46th Congresses but in 1880 was defeated.

"Beyond any question Col. Gabe Bouck was one

of the ablest lawyers in the state of Wisconsin. His knowledge of the law was profound and thorough and his judgment was sound and conservative. His eccentricities did not get into his judgment when he considered a legal proposition." "He was a strong, rugged man, a good lawyer, a safe counselor, and an able advocate."

*References:* Wisconsin Blue Book, 1901, 143, 161, 201, 210; Milwaukee *Sentinel*, February 22, 1904, from which the above quotations are taken and where there is a good likeness.

### EDWIN EUSTACE BRYANT.

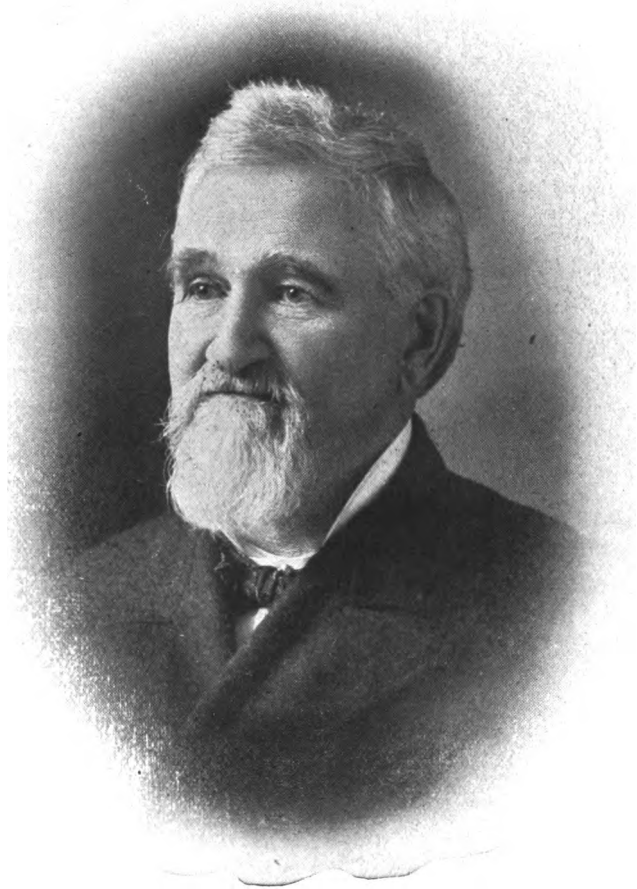
Born: Milton, Vermont, January 10, 1835.

Died: On train sixty miles east of Toronto, Canada, August 11, 1903.

Young Bryant's education was secured at the district school, at an academy and at the New Hampshire Institute, Fairfax. He taught also for five years. In the spring of 1857 he took up his residence in Janesville, Wisconsin. There he read law in the office of Ira C. Jenks, obtaining his income by teaching school.

On July 18, 1857, he was admitted to practice in Rock county and forthwith settled in Monroe, Green county, where he formed a partnership with John M. Bingham. Having, however, literary inclinations, he supplemented his practice by editorial writing on the *Monroe Sentinel*.

In April, 1861, he enlisted in a Green county company which became a portion of the Third Wisconsin Infantry. Of this regiment he was appointed sergeant-major. By various promotions he became regimental adjutant and was sent north on recruiting duty. Before leaving the seat of war, however, he had seen much severe service in Virginia and fought at Cedar Mountain, Antietam, Chancellerville and Gettysburg. After assisting with his regiment in the suppression of the draft riots in New York city in 1863 he did duty in Tennessee, Alabama and Georgia.



**EDWIN E. BRYANT**





While on recruiting duty in 1864 he was appointed assistant provost-marshal and resigned in consequence from the Third regiment in June, 1864. In February, 1865, he became lieutenant-colonel of the Fiftieth Wisconsin regiment on duty in the far west. In the winter of the following year he returned to his home in Monroe, expecting to re-enter the law. However, in 1868, he accepted the position of private secretary to Governor Lucius Fairchild and of adjutant-general of Wisconsin.

In the beginning of 1872 he resumed practice as a member of the firm of Vilas and Bryant in Madison.

The legislature of 1872 by act approved March 23, 1872, being chapter 104, authorized the reprinting of the early volumes of the reports of the Supreme Court, to be done under the immediate superintendence of some member of the bar as well as under the general direction of the court. Messrs. Vilas and Bryant were selected by the court for the work. By these gentlemen the first twenty-two volumes were revised, except that Judge Dixon annotated volumes three and five. This work was completed in the winter of 1875.

In 1878 Mr. Bryant served in the assembly. In 1880 he was appointed clerk of the committee on public lands in the House of Representatives at Washington—a position which he filled until March 4, 1883. He then returned to Madison and having purchased an interest in the *Madison Democrat* he assumed its editorial management.

In March, 1885, he was appointed assistant attorney general for the postoffice department at Washington and occupied that position for four years and until he resigned.

Returning again to Madison he accepted the deanship of the college of law of the University of Wisconsin and held the position until the close of the collegiate year in June, 1903.

He was chairman of the Fish Commission of Wisconsin and a member, and for term president, of the

National Fisheries Society. He attended a meeting of that society in July, 1903, and upon the same occasion visited his native place in Vermont. It was while returning from that filial duty that he died.

*References:* 122 Wisconsin xxxi, where are discriminating estimates upon Mr. Bryant's life and services, too long for insertion here; Milwaukee *Sentinel* of August 12 and 13, 1903, in the earlier issue being a fine likeness.

### ELISHA L. BUMP.

Born: Otsego county, New York, July 10, 1849.

Died: Wausau, Wisconsin, July 15, 1904.

He was educated in the common schools of his native state, in the Lake Mills, Wisconsin, high school, and in the Allegheny, New York, Institute. In 1868 he began the study of law in the office of V. A. Willard, Belmont, New York, completing his course with E. L. Browne at Waupaca, Wisconsin. In December, 1870, he was admitted to practice at Waupaca. First settling in Wausau in November, 1871, he formed a partnership with W. C. Silverthorn, the firm being Silverthorn and Bump.

In May, 1875, Mr. Bump removed to Waupaca and formed a partnership with E. L. Browne, which continued until March, 1879. During this brief residence he was chosen a supervisor and was chairman of the board in 1877 and 1878.

In 1879 he removed to Merrill, practiced as a member of the firm of Bump and Hetzel and served as mayor of the city.

Returning to Wausau he formed with A. U. Kreutzer and M. B. Rosenberry the firm of Bump, Kreutzer and Rosenberry. He held responsible positions in Wausau and was twice a candidate for the circuit judgeship.

*References:* Berryman's History of the Bench and Bar of Wisconsin, II, 579; Milwaukee *Sentinel*, July 16, 1904, where is a portrait.



**ELISHA L. BUMP**



## EGBERT B. BUNDY.

Born: Windsor, New York, February 8, 1833.

Died: Menominee, Wisconsin, September, 1904.

He was admitted to the bar in Cortland, New York, in January, 1856. The next year he removed to Dunn county, Wisconsin. In 1862 he was elected county judge of that county and served until his resignation in 1868.

In 1877 he was appointed by Governor Ludington to a vacancy on the bench of the circuit court of the Eighth circuit. By successive elections he occupied this position until 1896. "In some minor particulars the judge fell below the ideal. He sometimes lacked in patience; would sometimes arrive somewhat prematurely at a conclusion; would sometimes permit a prejudice against a case, though never against a person so far as it affected proceedings in court; was not a first-class listener. In the essential qualities of a judge, however, he rose to the ideal. His practical, hard common sense was the first thing that impressed a stranger that sat in his court. He was fearless. And not only was he absolutely just but seemed above temptation to be otherwise. Power could not intimidate, wealth could not tempt him."

*Reference:* Berryman's History of the Bench and Bar of Wisconsin, II, 301, from which the quoted portion is taken.

## FRANK A. CADY.

Born: Newport, Columbia county, Wisconsin, December 31, 1858.

Died: Hot Springs, Arkansas, March 30, 1904.

He obtained his education in the common schools, the Kilbourn city high school and the University of Wisconsin, from the law department of which he graduated in 1883. Thereupon he moved to Marshfield. He was a member of the county board of supervisors of Wood county twelve years, being elected chairman in 1898. He was five years a member of

the board of education of Marshfield, five years its city attorney and an alderman in 1900. In the same year he was elected as a republican to represent his county in the assembly of 1901. He was re-elected to the assembly in 1903. In this year he removed to Grand Rapids, which was his home at his death. His death occurred after undergoing an operation for gall stones and as the result of a leap, while deranged, from the third story verandah of his hotel.

His standing at the bar may be inferred from the fact that he was chairman of the judiciary committee of the assembly in the legislature of 1903.

*References:* Blue Book of Wisconsin, 1901, page 769; *Milwaukee Sentinel*, March 31, 1904. There are portraits at both places.

### WALTER STEUBEN CARTER.

Born: Barkhamsted, Connecticut, February 24, 1833.  
Died: New York City, June 3, 1904.

He was educated in the district schools and was admitted to the bar at Middleton, Connecticut, in 1855. He resided at first in Middletown, where he was a member of the board of education and the editor of a newspaper. In 1858 he removed to Milwaukee, where, with William G. Whipple, he formed the firm of Carter and Whipple. This firm was succeeded by Carter, Pitkin and Davis, the other partners being Frederick W. Pitkin and Dewitt Davis. He compiled the Wisconsin Code of Procedure in 1859, was United States commissioner and master in chancery, 1859-1862, and a trustee of Lawrence University, Appleton, 1864, 1865. A republican in politics, he managed the campaign which resulted in the first election of Matthew H. Carpenter to the United States Senate.

In 1869 Mr. Carter removed to Chicago, Illinois, where he formed the firm of Carter, Becker and Dale. In 1872 he went to New York as the representative of the Chicago creditors of the insurance companies which had failed because of the fire in Chicago in 1871. From that time he practiced in New York.



WALTER S. CARTER





He was a member there of several different firms, the last being Carter, Hughes, Rounds and Schurman—the second member of the firm being the lawyer who later was the counsel of the Armstrong committee, investigating the life insurance companies.

“Mr. Carter was a man of marked individuality. He had an extraordinary memory. Names, dates and the countless unrelated facts and events which came under a cursory observation he recalled without effort. This faculty, added to a rare personal charm, gave him a wide acquaintance. . . . He was a noted friend of law students and young lawyers. His advice and his assistance was always at their command. . . . With great ambition, determination and resource, he had a peculiar diffidence with reference to many professional activities, and thus he was able and glad to give to others golden opportunities for work and for winning professional reputation in forensic efforts while he reserved for himself a more congenial field in meeting men and in the management of the office business.”

He was a man of great versatility and of varied interest. He took great pleasure in the patriotic hereditary societies, was a patron of the fine arts and was an unusually skilled organist.

*References:* Milwaukee *Sentinel*, June 12, 1904; Report of American Historical Association for 1904, page 839, from which above extract is taken; Who's Who in America, 1903-1905, 242.

### WILLIAM E. CARTER.

Born: Piecombe, Sussex, England, November 17, 1833.  
Died: Milwaukee, Wisconsin, August 15, 1905.

When young Carter was sixteen years of age his parents removed to the United States and settled in Lancaster, Wisconsin. He had few advantages for study and when he entered the office of J. Allen Barber to study law, he had given himself all the education he had received. Admitted to the bar he practiced first in Lancaster, but in 1861 he removed to

Platteville, where he resided for many years. He took an active interest, as a Republican, in political affairs and was in the assembly in 1877, 1878 and 1879.

"He is particularly remembered in republican national circles because of the part he played in the convention of 1880 which nominated Garfield for the presidency. For thirty-three ballots Grant, Sherman and Blaine had been receiving the bulk of the votes, with Garfield getting one or two votes on each. On the thirty-fourth ballot Wisconsin gave Garfield sixteen votes and the swinging of the delegation into line was followed by his ultimate nomination. Mr. Carter in that fight worked hard and was instrumental in winning over the state delegation by his eloquent appeal for Garfield."

In 1895 Mr. Carter removed to Milwaukee and formed with George D. Van Dyke and William D. Van Dyke the firm of Van Dyke and Van Dyke and Carter, which continued until Mr. Carter's death.

"Mr. Carter was known as a strong and able lawyer of the old school, always courteous and dignified, but as a plain, hard-headed lawyer, a strong thinker and a thoroughly honest and upright man."

Mr. Carter was widely read on subjects outside of the profession and his private library was large, well selected and constantly in use.

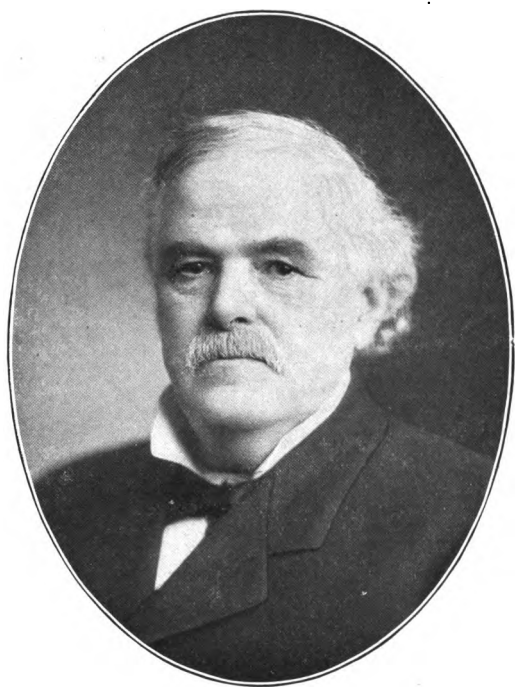
*References:* Milwaukee *Sentinel* of August 16, 1905, where is an excellent likeness, and from which the first above extract is taken; Milwaukee *Journal* of August 16, 1905, from which is the last quotation.

### EMMONS ELIJAH CHAPIN.

Born: Aurelius, New York, July 18, 1829.

Died: Milwaukee, Wisconsin, May 17, 1905.

After attending the public and private schools at Aurelius he began to teach in the academy there when he was sixteen years of age. Later he taught at Montezuma and when of age was chosen superintendent of schools of his native town. While occu-



*Yours Truly  
E. E. Chapin.*



pying this position and before, while teaching, he occupied his spare moments in studying law. On October 1, 1854, he landed in Milwaukee, and settled at Oconomowoc. In the spring of the next year he removed to Columbus, Wisconsin, where he lived and practiced law until 1880. In that year he removed to Milwaukee, which was his home afterwards.

Doubtless his most important litigation was as counsel for the government of the United States when he defended it against actions for damages on account of the improvement of the Fox and Wisconsin rivers. During the four years of this service, 1885-1889, he disposed of 1,127 suits, involving claims aggregating \$3,068,000. This amount of claims by successful management was reduced to \$300,000, and litigation which had been before commissioners and courts since March, 1875, was ended. "Love for his work kept him at the active practice of the law until the closing weeks of his life. . . . His cheerful nature and his genial attitude towards his acquaintances won for him a large following of friends."

*Reference: Milwaukee Sentinel, May 18, 1905.*

### AMASA B. COBB.

Born: Crawford county, Illinois, September 27, 1823.  
Died: Los Angeles, California, July 5, 1905.

He was educated in the public schools of his native county and at the age of twenty began to study law. In 1847 he entered as a private for one year's service in the Mexican war. For some years thereafter he was practicing law and engaging in politics, in Illinois. About 1854 he moved into Wisconsin and began the practice of his profession at Mineral Point. He became immediately a man of prominence. He served in the state senate during the sessions of 1855, 1856, and was elected to the assembly during the legislatures of 1860 and 1861, being speaker during the latter assembly. In this capacity he was influential and energetic in pushing measures for the preser-

vation of the Union and secured an early adjournment of the legislature for the purposes of raising troops. He went to the front as colonel of the Fifth Wisconsin Volunteer Infantry, serving in that capacity from June 4, 1861, until December 27, 1862. On September 17, 1862, he commanded General Hancock's brigade at Antietam.

While serving in the field he was elected to Congress, representing the Third District in four Congresses, from 1863 until 1871. During adjournment of Congress he rejoined his regiment. He was brevetted brigadier-general for gallant and meritorious conduct at Williamsburg, Golden's Farm, Malvern Hill and Antietam. On September 10, 1864, he became colonel of the Forty-third Wisconsin Infantry and served with it until July 7, 1865.

Not long after the conclusion of his Congressional service General Cobb removed to Nebraska. In 1878 he became one of the justices of the Supreme Court of that state and served until 1892. By the rotation required among the judges of that court he was twice chief justice. Leaving the bench in 1892 he became a banker. About 1900, wearying of the activities of life, he removed to Los Angeles to reside with a married daughter.

*References:* Blue Book of Wisconsin for 1901, pages 149, 164, 209; Milwaukee *Sentinel*, July 6, 1905, where is a portrait; Who's Who in America, 1903-1905, 286.

### ORSAMUS COLE.

Born: Cazenovia, Madison county, New York, August 23, 1819.

Died: Milwaukee, Wisconsin, May 5, 1903.

Judge Cole was brought up on a farm, but so husbanded his time and strength that he secured a college education and graduated from Union College in 1843. While in college he had begun legal pursuits and after graduation he devoted to these the time he could spare from teaching. In 1845 he was admitted



**ORSAMUS COLE**





to the bar and removed to Wisconsin, settling at Potosi. Here he began to practice. In 1847 he was chosen a member of the convention that framed a constitution for Wisconsin. In 1848, without his knowledge, he was nominated as a representative to the Thirty-first Congress. He conducted an energetic campaign and was elected as a whig. But he was not so servilely bound to his party as to follow Henry Clay, its leader, in every measure. He voted against the fugitive slave law.

Renominated for Congress in 1850, he was defeated by Benjamin C. Eastman, a democrat. In 1853 he was a candidate at the same election for two offices—that of state senator against Nelson Dewey and of attorney general against George B. Smith. He was defeated for both offices, losing to Dewey by three votes only.

Under date of February 19, 1855, he received a request from forty-five members of the legislature, requesting him to allow the use of his name as an independent candidate for associate justice of the Supreme Court of Wisconsin. He complied with this unexpected request and was elected. His career upon the bench of this court began at the June term, 1855, as the successor of Samuel Crawford, with Edward V. Whiton as chief justice and Abram D. Smith as senior associate. The first opinion filed by him is in the case of *The Troy Fire Insurance Company vs. Carpenter*, 4 Wisconsin 20. By successive re-elections he served as justice of this court until the expiration of his term January 4, 1892. From November 11, 1880, he had been chief justice. The latest opinion filed by him is dated December 15, 1891, in the case of *Waterman vs. Waterman*, reported 81 Wisconsin 17.

During this entire period cases of the highest importance were argued before this court, the enumeration even of which would trespass upon the space allotted to this sketch. Suffice it to say Judge Cole bore his full share of labor and responsibility. "The

record of Judge Cole's judicial services are contained in seventy-eight volumes of the reports. They constitute his greatest monument. They will abide and continue to influence conduct after the granite monument to his memory in yonder cemetery shall have crumbled. A life of good works performed with pure motives is the most enduring monument. Judge Cole made but few professions, but his conduct and example were continuous proclamations. . . . Judge Cole was not a genius with powers to thrill and capture the multitude, but a patient, plodding and conscientious judge who determined to do what he conceived to be his duty, regardless of public clamor or personal consequence. He was not born for, and did not covet, leadership, but was always attentive and indefatigable in the performance of the work on hand. He was never aggressive, but always thoughtful, laborious and firm."

Upon retiring from the bench, after thirty-six years and seven months of continuous service in one court, he removed to Milwaukee to reside with his son. Here with congenial, literary pursuits he rounded out the full measure of four score years and more.

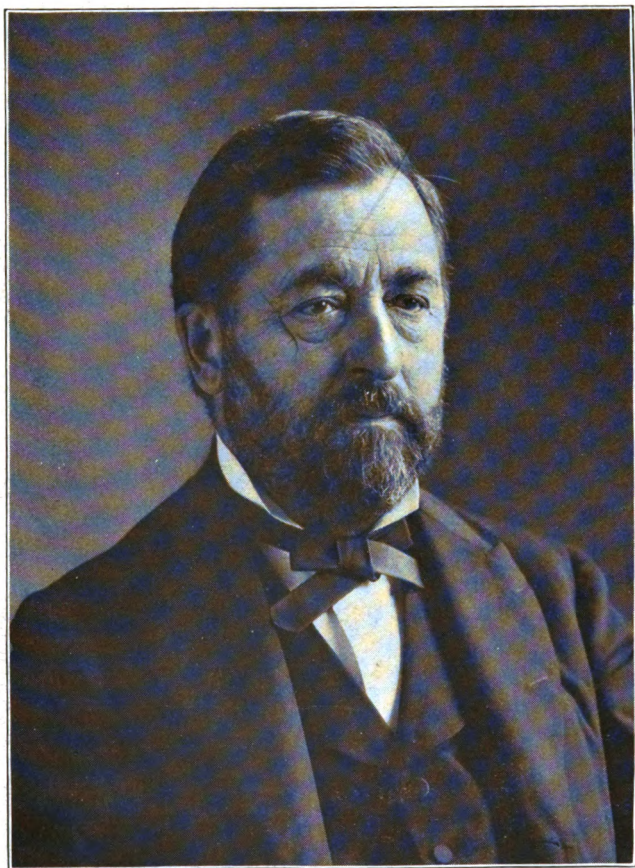
*References:* 119 Wisconsin Reports, page xxix, where, in the remarks of Chief-Justice Cassoday, are the quotations above made; Milwaukee *Sentinel* of May 6 and 7, 1903, in the former of which is a life-like portrait; New England Historic and Genealogical Register for 1892, page 297, where a table was printed showing that up to 1892 but five judges, state or federal, had shown a longer continuous judicial service on one bench than Justice Cole.

### CHARLES E. DYER.

Born: Cicero, New York, October 5, 1834.

Died: Milwaukee, Wisconsin, November 26, 1905.

When he was five years old his father removed his family to the little settlement which is now the village of Burlington. His early education in the pioneer schools of the neighborhood was supplemented by home training and instruction which gave him a fundamental knowledge of the higher mathematics and Latin, as well as of the common English branches.



**CHARLES E. DYER**



When sixteen years of age he went to Chicago to learn the printer's trade and became an apprentice in the office of the *Western Citizen*. His spare time was spent in acquiring a knowledge of stenography and it was this knowledge which brought him to the attention of Judge Ebenezer Lane, through whose influence he began the study of law.

Removing to Sandusky, Ohio, where a family friend was at that time clerk of the court of common pleas of Erie county, he obtained a situation in this office, where he gained his first acquaintance with the courts and the legal profession. Among the lawyers whom he met was Judge Lane, then upon the Supreme bench of Ohio. Judge Lane advised him to read law and placed his library at his disposal.

Young Dyer was admitted to the bar in Sandusky in 1857 and became a partner of Walter F. Stone. He practiced in Ohio but one year, when his fondness for his childhood home called him back to Wisconsin and in 1859 he established himself at Racine. For several years he had no partner, but he eventually formed a partnership with Henry T. Fuller which continued until Judge Dyer went upon the bench.

Meanwhile he served as city attorney of Racine in 1860 and 1861 and was a member of the assembly in the sessions of 1867 and 1868. "In his profession and in his political offices he had given such marked evidence of the judicial cast of his mind and of high character and integrity that his appointment to the bench by President Grant commended itself to those who had a knowledge of his attainments and ability." In February, 1875, he was appointed district judge of the Eastern District of Wisconsin.

Early in 1888 after thirteen years of service he resigned his position and accepted the place of counsel of the Northwestern Mutual Life Insurance Company of Milwaukee. He was appointed counsel on April 13, 1888, and was elected a trustee July 17, 1888, and he held both positions by continued re-elections until his death.

"To exceptional culture of mind he added great industry, judicial fairness and impartiality, a genial and patient temper, a keen sense of right and wrong and a faithfulness to duty as he saw it, which soon won and kept for him the respect and confidence of the bar of the district. . . . As counsel for the insurance company Judge Dyer was at the head of the entire legal department—a position of great responsibility and trust. Here, as in former positions, he met his large responsibilities with conscientious and thoughtful earnestness, giving the best of his large mental endowment to each duty as it presented itself. With tact, graciousness and decision he managed the affairs of his department with a fairness and an efficiency which won for him the approval of the officers of the company and the admiration and respect of its patrons."

*References:* Wisconsin Blue Book, 1901, page 168; Milwaukee *Sentinel* of November 27, 1905, from which the above quotation is made and in which is a portrait.

### EDWARD A. CONWAY.

Born: Manitowoc, Wisconsin, November 23, 1875.

Died: Milwaukee, Wisconsin, February 8, 1906.

Young Conway removed to Milwaukee with his parents in 1891 and became a student at Marquette College. When but nineteen years of age he graduated from the law department of the University of Wisconsin. Returning to Milwaukee he entered the law offices of Timlin and Glicksman and became the junior member of that firm about 1900. About 1903 he formed with Harrison S. Green the firm of Conway and Green. At the time of his death he was a partner with his brother, Lawrence J. Conway, as a dealer in bonds.

*Reference:* Milwaukee *Sentinel* of February 9, 1906.

## EDWARD F. GLEASON.

Born: Waukesha, Wisconsin, September 21, 1859.

Died: Ashland, Wisconsin, May 26, 1903.

After a preliminary course at Carroll College, Waukesha, Mr. Gleason entered the University of Wisconsin in 1876 and graduated in 1880. In the same summer he advocated in political speeches the election of James A. Garfield as president of the United States, gaining no little reputation as "the boy orator of Wisconsin."

Receiving an appointment as clerk in the Pension office at Washington he studied law outside of office hours and graduated from the Columbia College of Law in 1883. The next year he entered upon the practice of the law in Ashland with John J. Miles as partner. Two years later he became partner of C. A. Lamoreaux and in 1890 formed one of the firm of Lamoreaux, Gleason, Shea and Wright. Upon the dissolution of this firm Mr. Gleason formed with Richard Sleight the firm of Gleason and Sleight. For two years prior to his death Mr. Gleason had no partner.

"Mr. Gleason had a mind of unusual clearness and quickness of perception, strong grasp of the principles of the law, and an industry that mastered the details of every case committed to his care. Methodical habits of work enabled him to handle a large practice with apparent ease. A graceful and pleasing orator with a very exceptional power of clear presentation of the law and the evidence, he was a strong trial lawyer alike with the court and the jury."

*References:* Ashland *Daily Press*, May 27, 1903; Sketch by a classmate, Clarence Dennis, which contains above quoted sentences.

## FREDERICK W. HENDERSON.

Born: Milwaukee, Wisconsin.

Died: West Allis, Wisconsin, November 26, 1905.

Mr. Henderson graduated from the law department of the University of Wisconsin in 1876. He opened



an office in Milwaukee alone. In or about 1880 he became associated with Samuel M. Williams in the practice and the firm of Henderson and Williams was dissolved only by the death of the senior member.

He was a firm believer in West Allis and in its future, and was very forward in the advancement of its interest. When West Allis was incorporated as a village in 1902 he was elected its first president. He was a member of the Milwaukee County Bar Association.

*Reference:* Milwaukee Sentinel, November 27, 1905.

### EDWIN HURLBUT.

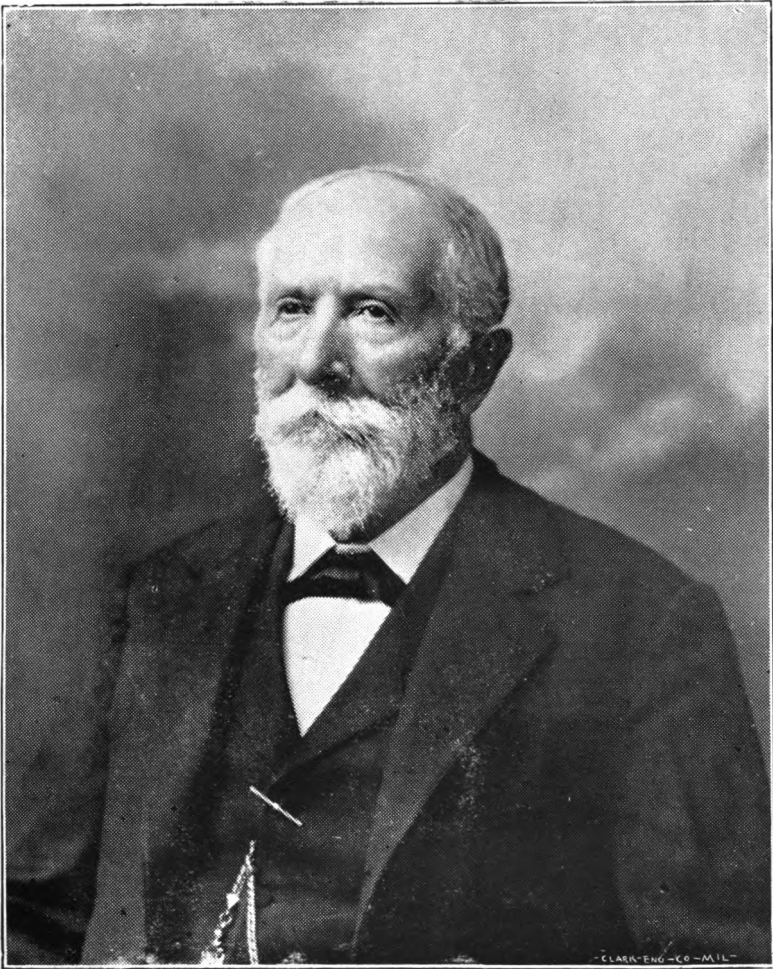
Born: Newton, Connecticut, October 10, 1817.

Died: Oconomowoc, Wisconsin, November 28, 1905.

At seven years of age he removed with his parents to Bradford, Pennsylvania, and thence to Michigan. When of sufficient age he studied law at Lodi, New York, and returning to Michigan opened an office at Manson in 1847. The next year he was appointed postmaster at that place. He was then elected district attorney of his county and appointed judge advocate of the Michigan militia with the rank of colonel. In April, 1850, he settled at Oconomowoc and began to practice law. This was his residence and this his principal occupation until his retirement from old age. He became early an attorney of the Milwaukee-Watertown-Madison plank-road. In 1856 he was elected district attorney of Waukesha county and was a member of the assembly in the legislature of 1869.

In October, 1875, he became the owner of the *Wisconsin Free Press*, published at Oconomowoc since the preceding May. Mr. Hurlbut conducted that paper from September, 1876, onward until his death.

*References:* Milwaukee Sentinel, November 30, 1905; Catalogue of newspaper files in the library of the State Historical Society, 1898, page 171.



**EDWIN HURLBUT**



## JOHN NELSON JEWETT.

Born: Palmyra, Maine, October 8, 1827.

Died: Chicago, Illinois, January 14, 1904.

When he was eighteen years of age his father moved to Madison, Wisconsin. Young Jewett graduated from Bowdoin College in 1850. He then taught school in Maine for two years, at the same time pursuing his legal studies. He then returned to Madison, where he was admitted to the bar early in 1853.

He did not practice long in Wisconsin but removed to Illinois in the same year, 1853, and with that state his long and honorable career became associated.

*Reference:* Report of the American Bar Association for 1904, page 818.

## DAVID LLOYD JONES.

Born: Llanfair, Denbighshire, Wales, October 9, 1841.

Died: Milwaukee, Wisconsin, December 29, 1904.

He received a good education in Wales and about 1858 emigrated to the United States. At Beaver Dam, Wisconsin, December 9, 1861, he enlisted in Company C, 16th Wisconsin Volunteer Infantry, as a private, but was speedily promoted. At Redborne, Mississippi, December 21, 1863, he re-enlisted with his regiment and when discharged July 12, 1865, he was adjutant of his regiment. His career in the army was one of constant active service. He was wounded in the neck in the charge up Bald Hill, near Atlanta, July 21, 1864, yet he participated in Sherman's march to the sea, in the battle of Bentonville, in the march to Washington and in the grand review before the President in Washington.

On his return to Wisconsin January 1, 1866, he accepted a position in the state treasury, where he remained until October 20, 1871. During his leisure he studied law and graduated from the law department of the State University in June, 1871. In the fall of this year he removed to Stevens Point. He became a

member of the firm of Cate, Jones and Sanborn. Later he was a partner of Gilbert L. Park. In 1897 he removed to Milwaukee and practiced law there. In 1899 he was appointed referee in bankruptcy and was serving in this position at his death.

*References:* Milwaukee *Sentinel*, December 30, 1904; *In Memoriam* of the Loyal Legion of the United States, February 7, 1905.

### BUELL ELDRIDGE HUTCHINSON.

Born: Jefferson county, New York, November 26, 1829.

Died: Chicago, Illinois, March 10, 1902.

He was educated at Potsdam Academy, Canton, New York, and in 1848 removed to Prairie du Chien, Wisconsin. He was admitted to the bar in 1854, in 1856 was elected to the assembly and in the same year was appointed district attorney of Crawford county. He was a member of the state senate in 1860 and 1861 and a regent of the University of Wisconsin at the same time. In 1878 while residing in Madison he was again elected to the assembly. From 1882 until 1886 he was receiver of the United States Land Office at Aberdeen, Dakota. In 1901 he removed to Chicago.

*References:* Wisconsin *Blue Book*, 1901, 151, 175; Proceedings of the State Historical Society for 1903, page 96.

### HERNY W. LANDER.

Born: Brighton, Somerset county, Maine, November 8, 1826.

Died: Beaver Dam, Wisconsin, January 14, 1904.

Mr. Lander removed to Wisconsin September 24, 1849, and settled at Juneau, Dodge county. He was employed as deputy clerk until 1852, when he began the practice of law in Beaver Dam. He was mayor of that city in 1857 and at later dates for four terms. In 1863-64 he was district attorney of Dodge county. He was a member of the state senate during the sessions of 1868 and 1869. In 1872 he was appointed United States court commissioner. At the time of



**BUEL E. HUTCHINSON**



his death he was the oldest attorney of Dodge county and for many years was president of its bar association.

“Mr. Lander had an extensive practice. He was conscientious, thorough and reliable in the matters placed in his hands.” “He made the Bible his rule and read and studied it every day.”

*Reference:* Letter from the Rev. Thomas S. Johnson, Beaver Dam, from which the quotations are taken.

### JAMES TAYLOR LEWIS.

Born: Clarendon, New York, October 30, 1819.

Died: Columbus, Wisconsin, August 4, 1904.

His boyhood was spent in work on his father's farm in the summer and attending district school in the winter. Classical courses in Clarkson Academy and Clinton Seminary completed his general education. He then entered the law office of Governor Selden at Clarkson. The summer of 1840 he spent in travel, mostly in the territory of Wisconsin. In 1845 he revisited the same territory and being greatly pleased with the country he made his home at Columbus and there opened a law office.

Being in Madison when Columbia county was organized in February, 1846, he stood its sponsor and suggested its name. He was admitted to practice in the Supreme Court, was elected a judge of probate for Columbia county, was appointed district attorney, and in November, 1847, became a member of the convention which met to form a constitution for Wisconsin. He was a member of the assembly in 1852 and of the state senate in 1853. He served as lieutenant governor of the state from January 2, 1854, to January 7, 1856, and as secretary of state from January 6, 1862, until January 4, 1864. For this last office he received every vote cast in the town of Columbus. He was governor of Wisconsin (“not as a democrat, not as a republican, but as a Union man”) from January 4, 1864, until January 1, 1866, receiving the



largest majority ever given for that office until the election of 1896.

His service for the Union cause during the latter part of the civil war was very efficient. The visit made by him and the governors of Ohio, Indiana, Illinois and Iowa to President Lincoln to tender him one hundred thousand men for one hundred days is matter of history.

Upon the inaugural of Mr. Lewis as governor he stated that he should not be a candidate for re-election, a promise that he faithfully kept, notwithstanding most earnest pressure to violate it.

Governor Lewis was one of the organizers of the State Historical Society January 30, 1849, and was a vice president for thirty years, beginning in 1867. The degree of doctor of laws was conferred upon him by Lawrence University in 1884.

The last years of his busy life were quietly spent in Columbus.

*References:* Blue Book of Wisconsin, 1901, pages 142, 143, 152, 179; Milwaukee *Sentinel*, August 5, 1904, where is an excellent likeness; Madison *Democrat*, August 5, 1904.

### HENRY J. KETTELLE.

Born: Milwaukee, Wisconsin, August 30, 1875.

Died: Milwaukee, Wisconsin, May 25, 1904.

Young Kettelle, at the age of nineteen years, entered the law office of Rip Reukema in Milwaukee and, upon being admitted to the bar, formed with his employer the firm of Reukema and Kettelle, which existed at Mr. Kettelle's death. He was active in church work and was a member of the Society of Christian Endeavor.

*Reference:* Milwaukee *Sentinel*, May 26, 1904.



**HENRY J. KETELLE**



## JAMES JOSEPH LUNNEY.

Born: Olathe, Kansas, December 31, 1869.

Died: Hot Springs, Arkansas, December 12, 1903.

He removed with his parents to Chippewa Falls, Wisconsin, in his early boyhood and received his education there at Notre Dame School. In 1894 he began the study of law in the office of W. H. Stafford of Chippewa Falls. He passed the examination in August, 1897, for admission to the bar and a few months later opened an office in Chippewa Falls. He was the democratic nominee for county judge of Chippewa county in 1897 and for district attorney in 1902. He was city attorney of Chippewa Falls in 1888 and 1889. He was of Irish lineage, was deeply interested in Irish affairs and was state secretary of the Ancient Order of Hibernians in Wisconsin at the time of his death. This event occurred while he was at Hot Springs for his health.

*Reference:* Letter of Elizabeth Lunney of April 5, 1906.

## ROBERT MACAULEY.

Born: Glasgow, Scotland, February 18, 1838.

Died: Menominee, Wisconsin, March 17, 1904.

His father removed with his family to the United States in 1842 and settled in Hancock county, Illinois. Here Robert worked on the farm until 1852, picking up what learning he could. In 1852 the family removed to a farm twelve miles south of Menominee, Wisconsin. In the spring of 1864 he entered the law office of Judge Egbert B. Bundy, but in September, 1864, he entered the Union army as a private in the Sixteenth Wisconsin Volunteer Infantry, serving with Sherman's army, and remaining in the field until the close of the war. He re-entered Judge Bundy's office July 1, 1865, and was admitted to the bar in January, 1867, and became in 1868 district attorney. In April, 1873, he was elected county judge of Dunn county

and served eight years. He was a member of the assembly in the session of 1883, served as city attorney of Menominee from 1882 to 1890 and in the spring of 1897 was again elected county judge of Dunn county.

Immediately upon his admission to the bar he had become a partner of his preceptor, Judge Bundy, and during this partnership was engaged in important tax litigation, of which *Wilson vs. Heller*, 32 Wisconsin 457, is an example.

*Reference:* Berryman's History of the Bench and Bar of Wisconsin, II, 311, where is a portrait.

### JOHN H. KNIGHT.

Born: Delaware, 1836.

Died: Watertown, Wisconsin, August 22, 1903.

His early education was received in his native state and at the age of twenty years he entered the Albany Law School. Until the breaking out of the civil war he practiced law in New York city. In 1861 he entered the service of the United States and continued that service during the rebellion. After the war he was given a commission in the regular army, in which he served until 1870. He then resigned and moved to Madison, Wisconsin, to practice his profession. From Madison he removed to Ashland, where in addition to practicing law he became interested in many manufacturing and business enterprises. He was the first mayor of Ashland, was for four years chairman of the democratic state central committee and in 1893 was a candidate for the United States Senate. The election, however, went to John L. Mitchell of Milwaukee.

*Reference:* Proceedings of State Historical Society of Wisconsin for 1903, page 96.

### TIMOTHY FRANCIS McCARTHY.

Born: Milwaukee, Wisconsin, 1863.

Died: Denver, Colorado, October 30, 1903.

He was admitted to the bar in his native state in



**JOHN H. KNIGHT**



1885 and practiced therein until about 1890. In that year he removed to St. Louis, Missouri. Five years later he made Colorado his home, and there in the brief remainder of his life he gained a high standing.

*Reference:* Report of the American Bar Association for 1904, page 809.

### ALFRED A. NUGENT.

Born: Port Lampton, Canada, May 12, 1848.

Died: Kaukauna, Wisconsin, October 30, 1903.

The family removed to Wisconsin when Alfred was five years of age. He was educated in the common schools.

On December 30, 1863, he enlisted in Company I, Twenty-first Volunteer Infantry, and was in all the battles from Chattanooga to Atlanta and in the march of Sherman to the sea. He lost his right arm at the battle of Bentonville, North Carolina.

After leaving the service he entered Lawrence University at Appleton. Upon graduation therefrom he studied law in the office of Thomas Lynch, at Chilton, Wisconsin, and attended lectures for two winters in the University at Madison.

In 1876 he was admitted to the bar at Chilton and practiced there until 1889, when he removed to Kaukauna, which was his residence until his death. He was city attorney of Kaukauna for five years and district attorney of Calumet county for one term.

In 1899 his failing health, particularly failing eyesight, compelled him to lay down his life work.

*Reference:* Sketch furnished by J. H. Chamberlain of Kaukauna.

### DAVID S. ORDWAY.

Born: Parishville, New York, August 16, 1826.

Died: Milwaukee, Wisconsin, September 20, 1904.

His parents removed to Milwaukee on July 28, 1838, arriving on the steamer *De Witt Clinton*. The first home of the family was near Walker's Point.



Mr. Ordway first practiced in Dodge county, with his home in Beaver Dam. During the war of 1861, he served as quartermaster of the Fifty-first Wisconsin Volunteer Infantry. In March, 1865, he removed to Milwaukee, where he at first practiced alone. About 1872 the firm of Mariner, Smith and Ordway was formed and after its dissolution the firm of Ordway and Hoyt existed for a period. Later Mr. Ordway had no partner.

He was a man of marked individuality, of deep legal learning and of scrupulous honor.

*Reference:* Proceedings of State Historical Society of Wisconsin for 1904, page 116.

### WILLIAM W. Q'KEEFE.

Born: Springville, Wisconsin, May 13, 1860.

Died: Ashland, Wisconsin, July 19, 1901.

He attended district school and upon the removal of his parents to Stevens Point he pursued his studies in the high school there. After completing his course there he entered the law offices of Raymond and Haseltine at Stevens Point and was admitted to the bar in 1881. He practiced in Stevens Point until 1887 and during that time was twice elected city attorney of that city. In 1887 he removed to Ashland, where he practiced his profession until his death. In 1891 and again in 1893 he was elected mayor of Ashland. In 1896 he was a candidate for Congress on the democratic ticket against Alexander Stewart of Wausau, but the district was republican and he was defeated, although running ahead of his ticket.

He had several different partners in the profession, including W. H. Packard, L. A. Cawkins, Rublee A. Cole and John Q. Copeman.

"He was a remarkable man in many respects, having a wonderful memory and good command of language. In fact he was considered the best criminal lawyer in northern Wisconsin some years ago. He



**WILLIAM W. O'KEEFE**



was always recognized as a friend of the laboring man and gave freely and his time and money to better their condition in life."

*Reference:* Sketch by Rublee A. Cole, dated June 13, 1904, embodying the above quotation from the *Stevens Point Gazette* of July 24, 1901.

### HALBERT ELEAZER PAINE.

Born: Chardon, Ohio, February 4, 1826.

Died: Washington, District of Columbia, April, 1905.

He graduated from Western Reserve College in 1845 and was admitted to the bar in Cleveland, Ohio, in 1847. He removed to Milwaukee in or about 1857 and formed in 1858 with Charles F. Bode the law firm of Bode and Paine with offices at Third and Chestnut streets. The next year Mr. Paine was a partner of Carl Schurz with offices in Kneeland's Block.

Upon the breaking out of the civil war he became colonel of the Fourth Wisconsin Volunteer Infantry and entered upon a momentous service in the army too long to be chronicled here. He became a brigadier general, lost a leg in the second assault on Port Hudson and resigned from the army May 4, 1864. From 1865 until 1871 he represented the Milwaukee district in the lower house of Congress. Upon the completion of his service he took up the practice of the law in Washington. For two years, from 1879 until 1881, he was commissioner of patents. At the expiration of this service he opened an office for the practice of law in Washington. He published in 1888 a work on contested elections—an authority on that topic.

*References:* Blue Book of Wisconsin, 1901, 209, 210; Milwaukee Directories, 1858, 1859; Milwaukee *Sentinel*, April 17, 1905.

### WALTER WRIGHT QUARTERMASS.

Born: Neenah, Wisconsin, August 6, 1859.

Died: Oshkosh, Wisconsin, March 2, 1903.

He graduated from the Oshkosh Normal School in 1883, and from the State University in 1890. He en-

tered upon the profession of the law and practiced in Oshkosh, being associated at one time with W. C. Cowling. He served six years as district attorney of Winnebago county, and was, not long before his death, the unsuccessful republican candidate for mayor.

Among a number of magazine articles published by him are "The Status of Personal Property for the Purposes of Taxation," published in the *Central Law Journal*, and "Defense of the Godless Schools of the State," in the *American Journal of Politics*.

*Reference:* Milwaukee *Sentinel* of March 3, 1903, where is an engraving of the deceased.

### EDGAR WARNER MANN.

Born: Vienna, Dane county, Wisconsin, November 18, 1851.

Died: Cheyenne, Wyoming, December 7, 1904.

At the age of nine years he was left, the oldest of four children, orphaned of both father and mother. He was taken by his grandparents, Samuel and Martha Warner, to their home at Windsor, Dane county, Wisconsin, where he was reared. From the district school he was sent to Beloit College, from which institution he was graduated in 1873.

The following year he completed the law course at the University of Wisconsin and was admitted to the bar.

For two years he was associated with Judge John J. Jenkins at Chippewa Falls, Wisconsin, removing with him to Cheyenne, Wyoming, in 1876. He was a member of the Wyoming territorial legislature in 1879. Register of land office, Cheyenne, 1881-1885. County attorney, 1885-1887. City attorney of Cheyenne, 1896 to the time of his death.



**EDGAR W. MANN**



## DANIEL GRAHAM ROGERS.

Born: West Point, Orange county, New York, November 20, 1824.

Died: Milwaukee, Wisconsin, March 21, 1903.

He fitted for college at Montgomery, New York, Academy, and after his graduation was assistant principal at that institution for about two years. After leaving this position he studied law in the office of High B. Bull, and subsequently took a course in the National Law School at Ballston Spa, New York. While pursuing this course, he attended a general term of court at Poughkeepsie, was examined for practice and admitted to the bar July 7, 1851. He then completed his studies at the law school and received the degree of Bachelor of Laws. He began practice in Montgomery, but removed west in 1853, and in 1856 removed to Milwaukee, where he was admitted to the bar and where he was in continuous practice until his death.

The only political offices held by Mr. Rogers, although an active republican, were those of member of the city council and a member of the board of alderman, in both cases from the Seventh ward, Milwaukee.

"He was a man remarkable for mental and physical activity, formed his opinions with rapidity, and had in an unusual degree the courage to maintain them. When convinced that he was right, he was seldom swerved from the course which he marked out for himself. He was an enterprising and useful citizen, and one who made his mark in the growth and progress of the city."

*Reference:* Milwaukee *Sentinel* of March 23, 1903, where there is an accurate likeness of Mr. Rogers, and from which paper the above quotation is made.



## RALPH CARL POPE.

Born: Black River Falls, Wisconsin, March 16, 1867.  
Died: Black River Falls, Wisconsin, March 15, 1905.

Ralph was educated in his native city and spent the greater part of his life there. In 1886 he became assistant postmaster there and upon reaching his majority he was elected city clerk and served three terms, resigning after his election for a fourth term.

In 1891 he removed to Superior, where he was engaged in the law office of his father, Carl C. Pope. He was admitted to the bar in 1892, and not long after he became a member of the law firm of Pope and Perrin, of which his father was the senior member. Upon the withdrawal of Mr. Perrin the firm became Pope and Pope and continued until dissolved by death. In March, 1899, the firm removed from Superior to Black River Falls. "His entire professional career was spent in association with his father, to whom he was a faithful assistant and great aid."

He was a member of the State Bar Association, of the Sons of the American Revolution, of the Masons, of the Knights of Pythias and of the Modern Woodmen.

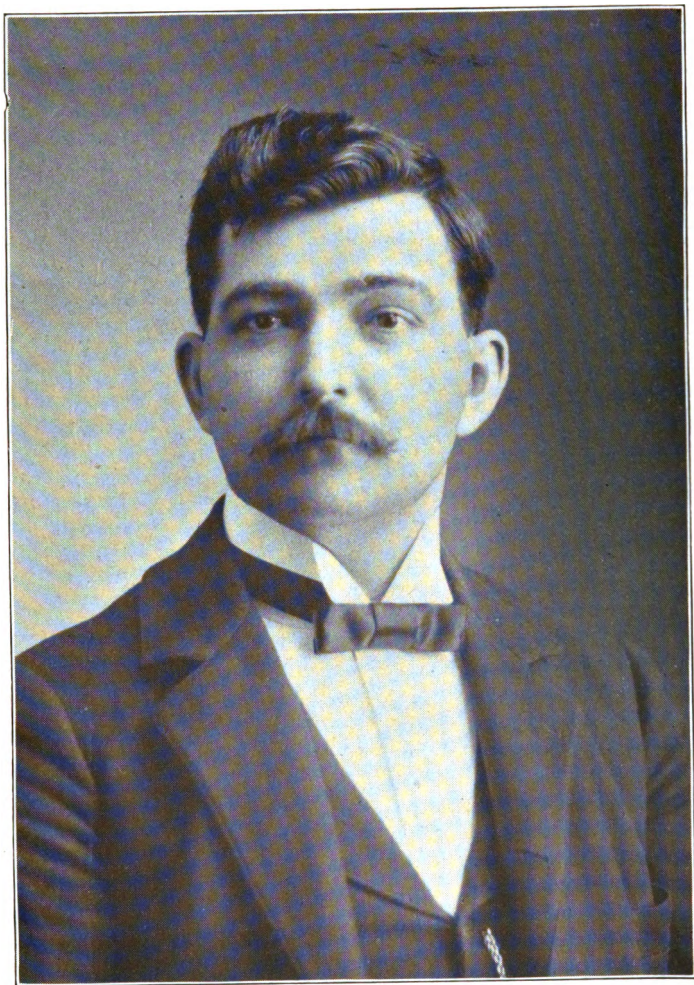
*Reference:* Sketch in *Black River Falls Journal* of March 22, 1905, from which above quoted sentence is taken.

## JAMES W. SEATON.

Born: New Hartford, New York, May 24, 1824.  
Died: Potosi, Wisconsin, February 11, 1904.

He studied law at Rome, New York, and settled at Potosi in 1847 and practiced his profession there. He published the *Potosi Republican* in 1851 and 1852, was a member of the state senate in 1853 and of the assembly in 1859 and 1860.

*Reference:* Proceedings of the State Historical Society, 1904, page 116.



**RALPH C. POPE**



## HENRY B. SCHWIN.

Born: Prussia, 1844.

Died: Port Washington, Wisconsin, August 14, 1904.

In 1845 his parents removed to the United States and settled in Mequon, Ozaukee county, Wisconsin. In early life Henry left the farm and fitted himself for teaching. About 1874 he moved to Port Washington, which continued his home until his death. He was mayor and justice of the peace for about fourteen years. He was district attorney two terms and was admitted to the bar in 1887. In April, 1902, he was elected county judge and was serving as such when he died.

*Reference:* Milwaukee *Sentinel*, August 15, 1904.

## GEORGE W. SLOAN.

Born: Farmington, Jefferson county, Wisconsin, January 24, 1850.

Died: Juneau, Wisconsin, November 13, 1904.

Mr. Sloan graduated from the University of Michigan in 1873 and began immediately to teach. In 1874 and 1875 he was principal of the Juneau high school.

In 1876 he engaged in the practice of law. In 1893 he was elected district attorney of Dodge county, and served until January, 1897. He was public administrator of Dodge county beginning in 1885.

“By industry and perseverance he built up a large practice and for several years he enjoyed the distinction of being one of the ablest jury lawyers of the Dodge county bar.”

*Reference:* Berryman's History of the Bench and Bar of Wisconsin, II, 548, from which the quoted sentence is taken.

## JOHN MONTGOMERY SMITH.

Born: Bedford Springs, Pennsylvania, February 26, 1834.

Died: Mineral Point, Wisconsin, May 14, 1903.

His residence in Mineral Point began when he was

four years old. In 1852 he went to California but returned in three years and began the study of law in the office of Justice Samuel Crawford. He was admitted to the bar in 1862 and entered into partnership with Justice Crawford. Upon the death of his partner he went into the banking business.

He served two terms as mayor of Mineral Point and two terms as district attorney of Iowa county. He was the democratic candidate for attorney general in 1879. During President Cleveland's first administration he negotiated treaties with the Ute Indians in Utah and Arizona and with the Chippewa Indians in Minnesota. He was elected to the legislature in 1892.

*References:* Milwaukee *Sentinel* of May 15, 1903, where is a correct likeness; Berryman's History of the Bench and Bar of Wisconsin, II, 213.

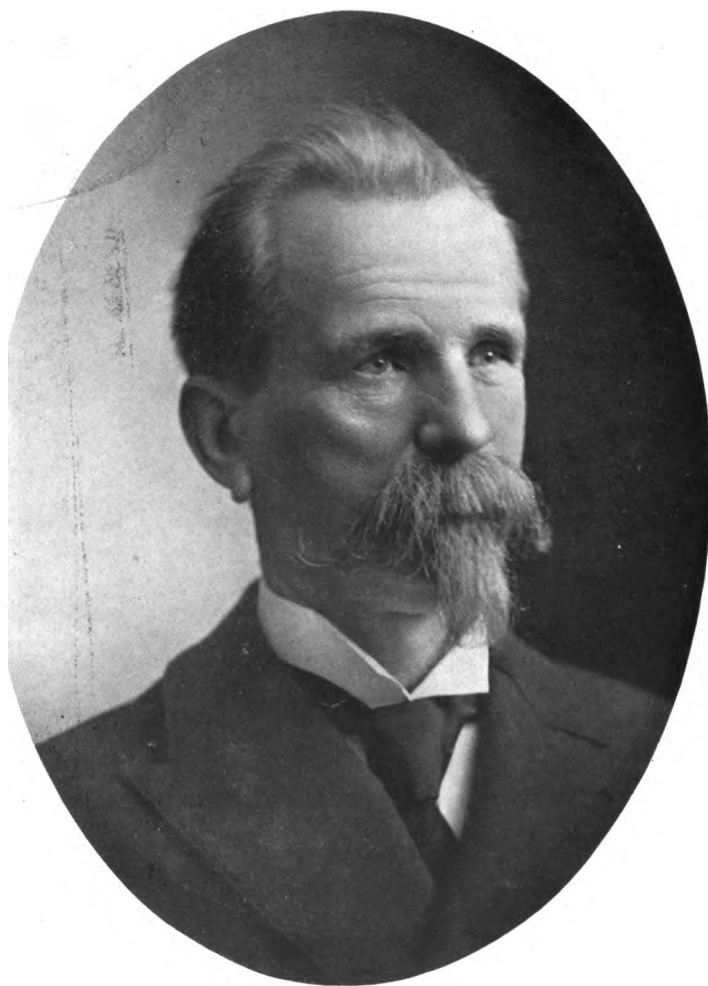
### CHRISTIAN SARAU.

Born: Segeberg, Germany, June 7, 1839.

Died: Oshkosh, Wisconsin, August 24, 1903.

Mr. Sarau removed with his parents to Wisconsin in 1848, settling on a farm in Mishicott, Manitowoc county. He removed to Oshkosh in 1854; in 1861 he was chosen assessor, holding the office six years, and in 1866 was elected justice, holding the office continuously until his death. He was admitted to the bar in 1878, and was appointed court commissioner in 1898. He was a member of the assembly in the sessions of 1899 and 1901, and was elected to the state senate in 1902. His death occurred while marching at the head of a procession of the Knights of Pythias, and was the result of being struck by a street car.

*References:* Wisconsin Blue Book of 1899, page 189; letter from George A. Sarau, of June 10, 1904; Milwaukee *Sentinel* of August 25, 1903, where there is a likeness.



**CHRISTIAN SARAU**



## DANIEL H. SUMNER.

Born: Malone, New York, September 15, 1837.

Died: Waukesha, Wisconsin, May 29, 1903.

He removed with his parents into Michigan in 1843, settling at Richmond, Kalamazoo county. His education was received at the district schools of the county and at Prairie Seminary, Richland. When about thirty years of age he began to study law, reading for a time in the office of Julius C. Burrows, now senator of Michigan. In June, 1868, he was admitted to the bar in Michigan and in the same year settled at Oconomowoc, Wisconsin. For a brief time in 1869 he edited with Alexander McGregor the *Oconomowoc Badger*, the name of which was changed by them to *La Belle Mirror*.

Meanwhile he was devoting himself to his legal studies. On March 22, 1870, he was enrolled a member of the Waukesha county bar and then removed to Waukesha. In 1875 he was elected district attorney. In September, 1882, at the democratic congressional convention held at West Bend, Washington county, he was nominated for Congress after a contest between Edward S. Bragg and A. K. Delaney, in which over fifteen hundred ballots were taken before a compromise was affected on Mr. Sumner. He was elected and served the Fifth District in the 48th Congress.

After the expiration of his term he resumed the practice of the law, his wife, Terrie M. Sumner, being associated with him. "He enjoyed the sincere esteem of all his associates at the bar for his ability, his integrity, his honor, which as a lawyer was above reproach, his genial demeanor, and for the intense enthusiasm and patience with which he grappled at all the problems he was called upon to meet in his multifarious duties of his profession."

*References:* Memorial of the Waukesha county bar, from which this quotation is taken; Catalogue of newspaper files in the library of the State Historical Society, 1898, page 170.



## BREESE J. STEVENS.

Born: Sconondoa, Oneida county, New York, March 22, 1834.

Died: Madison, Wisconsin, October 28, 1903.

Mr. Stevens received his academic education at academies in Oneida and Whitesboro, New York; at Cazenovia, New York, Seminary and at Hamilton College. From this last institution he graduated in 1853. He studied law in the office of Timothy Jenkins at Oneida Castle and of Graves and Wood at Syracuse.

Mr. Stevens came to Wisconsin to look after the landed interests of his kinsmen, Sidney Breese and Horation Seymour. In 1857 he opened an office in Madison and continued his practice there until his death. Among his partners were Thomas C. Sloan, W. A. P. Morris, James M. Flower and Henry M. Lewis. He conducted "some of the most important railroad, land grant and water litigations of this state and Michigan, in all these years enjoying an enviable distinction for conservatism, command of large affairs, great wisdom and a supreme sense of justice shading into generosity in all professional and business relations."

Mr. Stevens was much respected by his fellows, if judgment can be founded upon the positions he occupied. He was mayor of the city of Madison in 1884, president of the Madison Land and Lumber Company, president of the Monona Land Company, regent of the University of Wisconsin from 1891 until his death, curator of the State Historical Society from 1869 until his death and a vestryman of Grace Episcopal Church, Madison, for twenty-eight years.

"In his life time he was always known as one who gave to his church, to every good cause in the city and to his friends with unmeasured generosity. Since his death it has been found that in many ways unknown before his generosity never wearied. He was successfully engaged in many important financial enterprises; he was for nearly half a century a prominent



**BREESE J. STEVENS**



figure in his profession; he rendered invaluable services to the state and to the State University and yet he never failed to find time to render those services of friendship and extend those acts of kindness and sympathy which endeared him to the community in which he lived."

*References:* Memorial to Breese J. Stevens, from which first above quotation is taken; VI Wisconsin Historical Society Collections, page 7; 122 Wisconsin, page xxxix, containing a memorial address by Burr W. Jones, from which the last above quotation is made; Report of American Bar Association for 1904, page 871; Milwaukee *Sentinel*, October 29, 1903, where is a portrait.

### HAROLD GREEN UNDERWOOD.

Born: Litchfield, New York, August 1, 1852.

Died: Chicago, Illinois, May 12, 1905.

After preliminary preparation by a clerkship in the Patent Office, Washington, Mr. Underwood removed about 1880 to Milwaukee to practice law, making a specialty of the patent law. He was in partnership with Stanley S. Stout and with Frederick W. Cotzhausen, and later alone. In his specialty he had built up an extensive *clientile*. He died in a hospital in Chicago where he had gone for treatment.

### WILMOT HALE WEBSTER.

Born: Farmington, Michigan, June 11, 1849.

Died: Oshkosh, Wisconsin, August 16, 1905.

Through his own exertions he enjoyed the best educational advantages possible by taking a course at Hillsdale College, Michigan, where he graduated in 1869.

Immediately after this he began the study of law in the office of Brisbin and Palmer of St. Paul, Minnesota, and continued his reading there for two years. He was then admitted to the bar. Shortly thereafter he removed to Oconto, Wisconsin, where he practiced his profession for more than thirty years.

"Mr. Webster was one who possessed those qualities that made him a marked man in his profession.

He was well read in the law and his methods for the preparation of a trial were both thorough and effective. . . . He was a leader in the profession rather than a follower and in the earlier days in this state when the laws in regard to titles were not so well established as they now are the records of the courts will bear evidence of the fact that it was largely through his efforts that many of our present well known principles along this line were laid down. He was a lawyer of acknowledged ability and a safe counsellor."

*Reference:* Memorial presented to the Oconto circuit court in November, 1905, from which above extract is quoted.

### HORACE A. TENNEY.

Born: Grand Isle, Vermont, February 22, 1820.

Died: Near Madison, Wisconsin, March 13, 1906.

He was a printer by trade. His early years were spent at Plattsburg, New York, and Elyria, Ohio, to which latter place his parents removed in 1833. He was admitted to practice in the courts of Ohio in 1841. In 1842 he published the *Lorain Republican* at Elyria and in 1843 was elected prosecuting attorney of Lorain county.

In 1845 he, with his brother Henry, published at Galena, Illinois, the semi-weekly and weekly *Jeffersonian*. In 1846 he removed to Madison, Wisconsin, and purchased in December of that year an interest in the *Wisconsin Argus*.

In 1847 he was elected territorial printer and his name occurs in the imprint of the laws of the territory for 1847 and 1848. He was the reporter of both of the constitutional conventions. He was a member of the assembly in the session of 1857 and in the same year was elected a regent of the University. He received many honorable and responsible offices afterwards, none of them, however, pertaining to the profession of the law. In 1878 he was a candidate for Congress, in the Second District, of the party called



**HORACE A. TENNEY**



the national party. He was one of the organizers of the State Historical Society January 30, 1849, and of the 119 persons who then signed the roll he is the last survivor.

In 1880 he, with David Atwood, prepared a "memorial record of the fathers of Wisconsin, containing sketches of the lives and careers of the members of the constitutional conventions of 1846 and 1847-48; with a history of early settlement in Wisconsin."

*References:* Milwaukee *Sentinel*, March 13, 1906; Berryman's History of the Bench and Bar of Wisconsin, I, 305.

### JOHN WATTAWA.

Born: 1859.

Died: Phoenix, Arizona, November 24, 1904.

Mr. Wattawa's parents removed from Bohemia to the United States, and came to Wisconsin when he was four years old. He worked in a sawmill during summers and went to school during winters. He was elected county superintendent of schools before he was twenty-one years of age. He served in this office for four years and by that time had finished a course of legal study and was admitted to the bar.

He then began the practice of his profession in Kewaunee. He filled many political offices, was mayor for four years and in 1902 was candidate on the democratic ticket for lieutenant governor of Wisconsin. He died while seeking health in Arizona.

*Reference:* Milwaukee *Sentinel*, November 25, 1904.



## HENRY W. TENNEY.

Born: Grand Isle, Vermont, January 2, 1822.

Died: Appleton, Wisconsin, October 26, 1903.

His early years were spent at Plattsburg, New York, and Elyria, Ohio, to which latter place his parents removed in 1833. When a boy he learned the trade of a printer, and with this trade and by teaching school he worked his way through college. He graduated from the University of Vermont in 1845. With his brother Horace he then removed westward and for some years published a paper at Galena, Illinois. In 1848 he removed to Milwaukee and began, in the office of Levi Hubbell, the study of law, long his chosen profession. Shortly after his admission to practice he removed to Portage, Wisconsin, where for eight years he was associated with John P. McGregor. In 1860 he removed to Madison, where his brother, Daniel K. Tenney, was his partner. In 1870 the two partners removed to Chicago, where they became the senior members of the firm of Tenneys, Flower and Abercrombie, which "secured and maintained a reputation second to none in the Northwest." At the end of nine years, overwork forced him to a less strenuous life and he removed to Appleton, Wisconsin. In 1882 he retired from active practice.

By the members of the bar "he will ever be remembered as a painstaking, conscientious lawyer of high honor and integrity, a wise counselor, a strong advocate, respected and esteemed as a citizen."

*References:* Milwaukee *Sentinel*, October 27, 1903; Memorial of the bar of Outagamie county, from which the above quotations are extracted.



**HENRY W. TENNEY**



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